

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Plaintiff,) 13cr00220
V.) United States Courthouse
Brooklyn, New York
BEBARS BASLAN,) TUESDAY, JULY 15, 2014
9:30 a.m.
Defendant.)

TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE RAYMOND DEARIE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: LORETTA LYNCH
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BY: TIANA A. DEMAS
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Proceedings recorded by mechanical stenography, transcript
produced by Computer-Assisted Transcript.

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1 (Outside the presence of the jury.)

2 THE COURT: Good morning.

3 MR. SAVITT: Good morning, Judge.

4 THE COURT: Is Mr. Baslan here, by any chance?

5 MR. SAVITT: Let me see. I don't think so, Judge

6 let me -- no, he's not.

7 MS. DEMAS: Your Honor, would you like us to give
8 you a copy of the 3500 and exhibit binders?

9 THE COURT: Please.

10 Given the fact that the most recent applications are
11 essentially those of Mr. Baslan's, I think that -- I think it
12 prudent that we wait his arrival. I've asked the marshals to
13 do everything they can to expedite it, and we'll stand by. If
14 he's still intent on offering a plea to Count 5, if we have
15 the time, we'll take it. If we don't, we'll proceed and take
16 it at a later point. But I'm going to defer my brief
17 discussion of these until we have him in our midst, so stand
18 at least until then.

19 Is Gabby around? Oh, she's getting the jurors. Can
20 I ask one of you, when he surfaces, to ring my chambers.
21 Somebody will presumably be up in a minute or two, but if not,
22 we just ring my chambers.

23 Do we have a second reporter arranged in the event
24 we have time to take the plea? I'm starting at 10:00 sharp.

25 How many of the jurors are Long Island residents?

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1 Make a note of that?

2 MR. SAVITT: I did as we proceeded. I lost count,
3 your Honor.

4 THE COURT: Are there many?

5 MS. DEMAS: Your Honor, we believe one is.

6 THE COURT: Just one?

7 MR. SAVITT: Yeah, there were very few, which is
8 probably right.

9 THE COURT: You got lucky.

10 MS. DEMAS: Some may live in Queens and take the
11 Long Island Railroad, but --

12 THE COURT: Right. Okay. We're going to wait for
13 Baslan to have this discussion. And is he here?

14 MR. SAVITT: He's here.

15 THE COURT: Okay. I'll stay here, then.

16 MR. SAVITT: Does he have to get dressed before he
17 comes out or -- I don't want to hold you up, your Honor.

18 THE COURT: We've got 55 minutes, whatever you want,
19 however you want to do it. Might as well get him dressed.

20 MR. SAVITT: Yeah.

21 (Recess in proceedings.)

22 (Proceedings continued on following page.)

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1 (CONTINUING)

2 (Defendant enters the courtroom.)

3 THE COURT: Are we ready then? Counsel, come up,
4 please.

5 In addition to the materials that Mr. Savitt
6 tendered last evening, penned by Mr. Baslan himself, I did see
7 and have Mr. Savitt's cover letter, if you will, of July 14th
8 summarizing in two pages the sum and substance of these
9 applications and giving some history.

10 I remain committed to the notion that the
11 overwhelming likelihood is that this similar act evidence is
12 going to come in, certainly under 413. It is a possibility
13 given the way 414 is drafted that it would be admissible
14 thereto and certainly admissible under 404(b). The only
15 question remains whether or not there is a legitimate 403
16 concern about the evidence because it goes to the central
17 issue that I anticipate in the case. I would readily tip the
18 403 balance in favor of admissibility, but we will wait and
19 see, as I said before, and hear the openings, and make a final
20 judgment at that point.

21 With respect to Mr. Baslan's late afternoon
22 submission, I am tempted to do what the Government suggests I
23 do and I am permitted to do, which is essentially ignore them.
24 Mr. Baslan is represented by experienced Counsel who made any
25 number of applications on his behalf who opts not to make many

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1 of the applications that are now before me. I will be doing
2 him a favor, I think frankly, if I did. But I have the
3 discretion to consider them and in an exercise of extreme
4 caution, I will certainly review them and consider them, as I
5 have.

6 He is intent on masterminding his Defense; whether
7 that is prudent or not, I guess, remains to be seen, but there
8 is nothing in these applications that I have that warrants any
9 consideration.

10 There are a couple here that I have said all I am
11 going to say for the moment on the Messiah issue. It is not
12 for me to determine the credibility of a Buffalo witness.
13 That is clearly a matter for the jury and if the issue evolves
14 as I anticipate it will evolve, as I said before, that
15 testimony is readily admissible.

16 In terms of the needs of Mr. Baslan vis-à-vis his
17 defense, I leave that between Mr. Baslan and his attorney. I
18 have never denied a CJA request for any auxiliary help at all
19 and Mr. Savitt and his colleague have not been shy about
20 making those requests, all in an effort to provide Mr. Baslan
21 with his defense. So, I really have very little to add to the
22 discussions we have had to date.

23 My final ruling on the admissibility of Buffalo will
24 await that point in the trial when it becomes germane, so I
25 would ask Counsel to refrain from alluding to it in their

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1 opening statements, as I'm sure Mr. Savitt will.

2 There was one issue that surfaced as we adjourned
3 last evening and that is a 403 objection to one or two of the
4 images that the Government seeks to offer and described
5 adequately on the record yesterday by Mr. Savitt and that
6 warrants some attention because they are, like all of these
7 images, disturbing and perhaps more disturbing than others. I
8 would not permit, nor has the Government sought to admit the
9 audio of these incidents, which I am sure -- I have not heard
10 it, I have seen all the images -- I am sure is unimaginably
11 horrific. That would clearly fall victim to any honest
12 application of 403.

13 The images themselves in my view again, subject to
14 what I hear, do not. Yes, they are graphic and yes, they are
15 unpleasant, as is almost all of the evidence in the case. I
16 can't -- what is the old expression -- make a silk purse from
17 a cow's ear or something like that? I can't change the nature
18 of this case with the nature of the proof and while those two
19 images are in some respects different from others also
20 unpleasant, there will be no mistake here that Mr. Baslan is
21 not charged with that conduct. It will be clear from the
22 Court's presentation and certainly clear from Mr. Savitt's
23 presentation no one would attempt to suggest otherwise.

24 But the issue, whether we have criminal intent and
25 indeed, what the intent was here, is informed in my view by

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1 the very nature of those images however unpleasant they may
2 be. One who seeks to acquire for whatever purpose, presumably
3 sexual gratification, images of that sort may intend to commit
4 the acts that are alleged in the indictment and so my current
5 thinking on those, although I have considered them carefully
6 and have re-pictured them in my mind, not that it takes a lot
7 of imagination, is to receive them without qualification.

8 Is there anything else?

9 MS. DEMAS: Your Honor, the Government did want to
10 raise a few issues about the defendant's intention to plead
11 guilty to Count 5 before trial begins.

12 I just want to be clear that the Government's
13 position is that should the defendant choose to plead to that
14 charge, we don't believe that the defendant should be able --
15 permitted to introduce that guilty plea at all unless he takes
16 the stand. It is hearsay and there is case law to support the
17 fact that a defendant cannot offer the minutes of his plea
18 during the trial unless he takes the stand.

19 If he takes the stand, obviously, he can adopt the
20 statement. It is not a statement against his penal interest
21 for which an exception would apply because he is not
22 unavailable. Obviously, he controls whether or not he is
23 going to waive his Fifth Amendment right to testify. So we
24 would ask that.

25 The Government's intention, if he were to plead, is

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1 not to discuss that fact at all. So, we would ask that
2 Counsel be instructed not to raise that issue if the defendant
3 does plead in his opening or at any point during the trial
4 unless and until either A) the Government introduces it as a
5 statement against the defendant's interest or B) the defendant
6 takes the stand.

7 THE COURT: That doesn't surprise me.

8 Go ahead.

9 MR. SAVITT: No, it doesn't surprise me and I
10 understand all of the implications.

11 I suppose at some point the jury will get wind of
12 the idea, certainly at the end of trial, irrespective of
13 whether Mr. Baslan takes the stand or whether the Government
14 introduces the statement in some fashion in its case-in-chief.
15 I don't know if there is going to be -- well, I guess there
16 wouldn't be part of a rebuttal case, but whatever it is, I
17 think the jury will figure it out when they only have four
18 couldn't to counts to consider as opposed to the fifth.

19 THE COURT: I am not so sure. If they figure out
20 that he's pled guilty? All sorts of things could have
21 happened that result in my giving them four charges to
22 consider rather than five.

23 MR. SAVITT: Well, certainly I can argue in my
24 opening statements that that is not an issue that we're
25 contesting.

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1 THE COURT: That, you can say.

2 MR. SAVITT: Correct.

3 So, I don't have any concern beyond that with the
4 Government's application.

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6 (Continued on following page.)

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1 THE COURT: While we're waiting, make sure, be vigilant
2 to make sure there are no jurors in the courtroom.

3 MS. DEMAS: I can confirm that none of the people in
4 the back are jurors.

5 THE COURT: I understand that, but on these first
6 days, although they're told where to report, one never knows.

7 MS. DEMAS: I will have one of the agents keep a
8 lookout.

9 THE COURT: At last report, at about 20 of 10:00, we
10 have all but two jurors. I'll have an update momentarily.

11 (Recess in proceedings.)

12 THE COURT: We're just waiting for the jurors to be
13 brought out; they're being brought up, as I'm told. I do not
14 have a head count at the moment.

15 You need that screen down?

16 MR. SMITH: With our third witness, we're going to
17 play audio and video. We don't need it for the opening,
18 your Honor.

19 THE COURT: All right.

20 MR. SMITH: Judge, before the jury comes out, it
21 just occurred to me, in the event the press wants exhibits
22 that are not child pornography, generally, we give them to the
23 press but we ask the Court's permission first.

24 THE COURT: If they're admitted into the public
25 record, without qualification the press are entitled to them.

1 We're down two. You heard from them?

2 THE CLERK: No, the jury clerk is calling them. I
3 have their numbers upstairs.

4 THE COURT: But the rest are inside?

5 THE CLERK: The rest are inside.

6 THE COURT: Well, as handsome as you all are, I'm
7 going to step outside until we have a full compliment. The
8 moment we do, we'll be ready to go.

9 THE CLERK: Judge, we're missing one, now.

10 (Recess in proceedings.)

11 THE COURT: All right. We're ready to go.

12 I take it the jury has not been sworn?

13 MR. SAVITT: Correct, your Honor.

14 MR. SMITH: Your Honor, one of our witnesses has
15 indicated he may know one of the jurors.

16 MS. DEMAS: He said he saw her walking in while he
17 was waiting in the hallway. He thinks they grew up on the
18 same street. He doesn't know her by name.

19 THE COURT: Remind me at the break.

20 MS. DEMAS: Yes, your Honor.

21 MR. SMITH: Yes, your Honor.

22 (In the presence of the jury.)

23 THE COURT: All rise.

24 Gabby, hit that, would you.

25 THE CLERK: I need the swipe.

1 THE COURT: All right. Good morning, ladies and
2 gentlemen.

3 THE JURORS COLLECTIVELY: Good morning.

4 THE COURT: If you'll please remain standing for
5 just a moment.

6 Is the jury satisfactory to the government?

7 MR. SMITH: Yes, your Honor.

8 THE COURT: And to defense?

9 MR. SAVITT: Yes, your Honor.

10 MR. SMITH: Your Honor, we appear to be missing
11 someone.

12 THE COURT: Missing someone?

13 THE CLERK: Did somebody stay behind?

14 THE COURT: No, we have the right number.

15 THE CLERK: The alternate is now Alternate 1, is now
16 on seat three.

17 THE COURT: Okay.

18 MR. SMITH: I'm sorry, your Honor. We have the
19 right number, they're just not in the right positions.

20 THE COURT: That's all right. Don't worry about it
21 for now.

22 Swear the jury, please.

23 THE CLERK: Raise your right hand. Do each of you
24 solemnly swear that you will well and truly try this case
25 before you and a true verdict render according to the evidence

Judge's Preliminary Instructions

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1 and the law?

2 THE JURORS COLLECTIVELY: I do.

3 THE COURT: Please be seated, everyone. Once again,
4 ladies and gentlemen, good morning. My name is Raymond
5 Dearie. I am the judge who will be presiding during the
6 course of this trial. I have a few preliminary remarks for
7 you, some instructions, some of which you've probably heard
8 before, and then we'll begin right away with the opening
9 statements of counsel and the government's case in chief.

10 This being the first day, we start late; that's not
11 something we're going to do regularly. We are very conscious
12 of the fact we have invaded your lives, albeit to perform a
13 vital function, exercise power that the Court does not have,
14 to sit in judgment of another person, a profound
15 responsibility of citizenship. I can appreciate, during a
16 long day of jury selection, it's somewhat tedious. It is in
17 many ways the most important point in the trial. You've
18 assured us that you can decide the issues of fact in this case
19 with complete fairness and impartiality; and that's what this
20 trial is about, to resolve the issues of fact but through the
21 efforts of the jury, in the course of the next couple of days.

22 So we do appreciate the time you've given us
23 yesterday. We assure you, as we now formally begin the trial,
24 that we will not keep you waiting. When I say 9:30 or 10:00,
25 we will begin at 9:30 or 10:00. So we ask you please to

Judge's Preliminary Instructions

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1 anticipate the almost inevitable delays associated with travel
2 in and around the City of New York, because we are going to
3 start on time, out of respect for your time and in an effort
4 to move these proceedings along responsibly and stay within
5 the reasonable confines of your schedule time.

6 Let me tell you about our schedule. We begin most
7 mornings at 9:30 or 10:00. And I will give you advance notice
8 of the starting time, so if there's any variation, you'll know
9 about it as soon as I do. I don't anticipate any exceptions,
10 but if there are, for whatever reason, you'll know it as soon
11 as I do. We conclude the day at about 5:00 o'clock. I fudged
12 the 5:00 o'clock, not because we'll work past 5:00 o'clock,
13 necessarily, but because occasionally we have a witness on the
14 stand who, if we stay an extra minute, or two or three, we may
15 be able to finish that witness' testimony, particularly if the
16 witness is committed elsewhere.

17 On most days, if not every day, you'll be on your
18 way home by 5:00 o'clock. We'll take an hour and five minutes
19 for lunch. We'll take mid-morning break, a mid-afternoon
20 break, brief breaks to allow you and everybody else to get out
21 of the courtroom and relax. If you've not served as a juror
22 before, you're going to find out that sitting still for long
23 period of time, concentrating, involves an almost physical
24 effort. You'll be downright tired at the end of the day, I
25 assure you. I'm going to put you to work. To give you an

Judge's Preliminary Instructions

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1 opportunity to refresh and be comfortable, we'll take a
2 mid-morning and a mid-afternoon break.

3 My limited responsibilities here are to see to it
4 that we do what we can so that you can discharge your profound
5 responsibility without any distraction, discomfort or anything
6 else. So if at any time during the course of the trial you're
7 uncomfortable for any reason and you need a quick break, just
8 indicate to the clerk or to me that you need a break, and
9 we'll take a recess. But we do schedule a break in the
10 mid-morning and mid afternoon, as well as, of course, lunch.

11 A lot of work, as I'm sure you can appreciate, is
12 done in advance of this trial, in large measure, to see to it
13 that all the issues that might come up in the course of the
14 trial are addressed so that we can proceed efficiently and not
15 keep you waiting. Occasionally there are legal issues that
16 requires the Court's attention that we did not anticipate. If
17 that happens and we interrupt the proceedings, rest assured we
18 are diligently addressing that issue; we're not entertaining
19 ourselves, and we will resume the proceedings as quickly as
20 it's humanly possible. Again, we are super sensitive to the
21 time that you've given and will give this Court. Okay.

22 A couple of suggestions, the temperature in the
23 courtroom sometimes is an issue. These days the temperature
24 outside is an issue. Bring a sweater or jacket, something you
25 can put on or take off, as the temperature in the courtroom

Judge's Preliminary Instructions

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1 might require. Again, it's to ensure you're comfortable. I
2 don't want you sitting there chilled or half asleep because
3 the temperature in the courtroom is 80 degrees. It's been
4 pretty consistent. We haven't had too many problems, but
5 anticipate the possibility that the climate in the courtroom
6 might become an issue for all of us.

7 Jurors often ask about note-taking. All right.
8 It's a common subject. I have no objection to your taking
9 notes during the course of the trial, none at all. But there
10 are a number of things I'm required, and good judgment should
11 tell you, about note-taking. First of all. As we know from
12 our school experiences, some of us are better note-takers than
13 others. If you take a note or decide to take notes, they're
14 for your use only, not to be brandished about during the
15 course of your deliberations, as proof positive of what may
16 have happened during the trial or what a particular witness
17 may have said.

18 We have a better source for that; every word that's
19 spoken in this courtroom by anyone is recorded by our faithful
20 court reporter, the only person in the room whose
21 concentration cannot wonder for a second, if you stop and
22 think about it. And she sits quietly there, doing her job,
23 but is the resource to you and everyone else, if and when you
24 need your recollections refreshed. If you take notes, they're
25 not to leave the building.

Judge's Preliminary Instructions

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1 At the end of the day, any note-taker should hand
2 the notes to Gabby or to Ellen, whom you'll meet tomorrow, I
3 guess. They'll be placed in an envelope. We'll seal the
4 envelope, sign it and it will be put in our safe overnight and
5 returned to you tomorrow morning. And understand the act of
6 note-taking is an act of divided attention. All right.
7 You're taking a note. We want your attention principally to
8 be on the witness, so be aware of that, and understand the
9 potential risks in note-taking. And I say that not to
10 discourage you, just to sensitize you to the fact that
11 note-taking can be a little bit hazardous at times. Okay.

12 So you have our schedule. As I said, if there's to
13 be any change in the schedule, you'll know it the moment I do.
14 Okay. Now that you've been selected and sworn, you're not to
15 enter this courtroom ever unless escorted by Gabby or Ellen.
16 Please make sure that you'll report each morning to the jury
17 room, and we will be summoning you at the stated hour to begin
18 our proceedings. Okay. If you have any questions about how
19 we conduct the business of the court with or the experience
20 that you're having as a juror, at the end of the trial and the
21 work is done, you'll be given an opportunity to pose those
22 questions to me or anyone else you would like to speak with,
23 but, for now, no discussion whatsoever with anyone connected
24 with the trial. Okay.

25 So we begin, then, the process of this criminal

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1 case, about which you've heard a little bit, not much, during
2 the jury selection. So let me share with you a few further
3 notions that may help you in the course of your duty. First
4 of all, you're here to administer justice with complete
5 fairness, according to the law, and the evidence and
6 impartiality, without bias, prejudice or sympathy for or
7 against the government or Mr. Baslan. All right.

8 It's an important case. The government is charged
9 with the responsibility of enforcing our federal criminal
10 laws, and, of course, to Mr. Baslan, who's charged with
11 serious offenses and is presumed innocent of those charges.
12 I'm not going to go over the Indictment itself. You've heard
13 a little bit about the charges yesterday. Counsel may, I
14 assume, to some extent refer to the specific charges in
15 opening statements, if they choose to do so.

16 The defendant has pleaded not guilty, thereby
17 placing at issue the issues in the Indictment. The purpose of
18 the trial is to determine whether the government meets its
19 burden of proving the defendant guilty of the specific charge
20 beyond a reasonable doubt. A defendant does not have to prove
21 his innocence, quite the contrary. The defendant is, as I
22 said, presumed innocent of the charges. All right. And that
23 presumption stays with him throughout the trial, throughout
24 your deliberations, until such time, if ever, you as a jury
25 are unanimously convinced of his guilty, with respect to a

Judge's Preliminary Instructions

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1 charge you are considered, so please do bear that in mind.

2 Now, as I said, in just a minute or two we'll have
3 opening statements. The government will make an opening
4 statement, sort of a preview, if you will, of what they
5 anticipate you're going to hear. Okay? Sometimes the
6 evidence will not come in truly chronological order, so the
7 opening statements may be of assistance to you, as we begin
8 the presentation of evidence.

9 What the lawyers say in their opening statements is
10 not, I repeat, not evidence. All right. Bear that in mind.
11 What the lawyers say in their opening statement and, indeed,
12 what the lawyers say in their concluding statements, or
13 summations, is not evidence. All right. As soon as the
14 opening statements are finished, the government will begin
15 immediately with the presentation of evidence in support of
16 the charges. When the government finishes that, the
17 presentation, in a couple, a few days or whatever, the
18 defendant has an opportunity to present evidence, but he is
19 not required to do so.

20 The burden is always on the government to prove
21 every element of the offenses charged beyond a reasonable
22 doubt. The law never imposes on a defendant in a criminal
23 case, the burden of calling any witnesses or introducing any
24 evidence whatsoever. And, finally, then, when the evidence is
25 complete, you'll hear arguments again from counsel, and, as

Judge's Preliminary Instructions

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1 you now know, what they say to you is not evidence. And I'll
2 have more to say on the subject just before we hear the
3 attorneys' summations. And after that, I will charge you,
4 instruct you on the law that governs this case.

5 Your verdict must be unanimous with respect to each
6 count. You have a tremendously important task as jurors;
7 yesterday it was inconvenient to interruption, jury duty, how
8 am I going to get to the courtroom. You all understand that,
9 but now I tell you, you have a tremendously important task as
10 jurors. If that is not apparent to you now, it will very,
11 very quickly become so.

12 The Constitution of the United States gives a
13 defendant the right to have you, members of our community,
14 find the issues of fact that are in dispute. I have no such
15 power. I have no such authority. You, and you alone, are the
16 sole judges of facts. I will try to preside, partially, of
17 course, and not express any opinion concerning the facts. If
18 at any time, however, I say or do anything that gives you the
19 impression that I have a view, an opinion either about some
20 statement that a witness made, or about the witness himself or
21 herself, rest assured I have no such opinion, number one.

22 And, number two, even if I did, it has no
23 consequence whatsoever. What I think doesn't matter; it's
24 only what you the jury thinks. So if you have the impression
25 that I have some sort of an opinion, disregard it. I say this

Judge's Preliminary Instructions

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1 to you, frankly, because years ago jurors would ask, when you
2 said this or did this, were you suggesting to us such and
3 such? The answer is no. There are no suggestions, there are
4 no hints, subtle or otherwise, for the jury. This is your
5 exclusive domain, and I will not impose myself in that regard.
6 Now, obviously, as sole judges of the facts, you will be
7 called upon to determine the witness -- what witnesses you
8 believe and what weight or significance to attach to the
9 testimony of each witness. Again, your decisions, not mine.

10 Where an objection to a question is sustained, that
11 means that I agree with the legal basis expressed or implied
12 by the objection. This is not television. The lawyers, I
13 assure you, will not be getting up and making speeches. Okay.
14 You may hear the word "objection." You may hear a numerical
15 reference that's a reference to our Federal Rules of Evidence;
16 you may hear a simple phrase, but you're not going to hear
17 speeches. For that, I'm called upon to make a legal judgment
18 as to the application of our Federal Rules of Evidence.

19 My rulings on objections by counsel have nothing to
20 do with your role. Okay. And so don't read anything into
21 them. If I sustain an objection, ignore -- if I sustain an
22 objection, ignore the question. And if any answer had been
23 volunteered, ignore that, too, as I will tell you at the time.
24 If I overrule the objection, that simply means that I don't
25 agree with the lawyer making the objection. Okay. And bear

Judge's Preliminary Instructions

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1 in mind the lawyers have an obligation to make objections when
2 they feel that evidence should not be received or is otherwise
3 excludable under our Federal Rules of Evidence. It's a legal
4 judgment I'm making, I'm not imposing myself on your
5 responsibility. All right.

6 Now, obviously you may not consider anything you may
7 have read or heard outside the courtroom. You've just taken
8 an oath to decide the issues of fact based upon the evidence
9 and only the evidence. So I ask you please be vigilant. This
10 is a public courtroom. The press that work in the building,
11 there's always the possibility that there may be a story in
12 your morning paper, maybe a story on your evening news on TV
13 and so forth. If you come across anything that remotely
14 resembles this case, we ask you to turn your attention away
15 from it. All right. It may be accurate. It may be
16 inaccurate. In my experience, it's generally a little bit of
17 both. But one thing it is not, it is not evidence. And as I
18 said, you've sworn to us that you will decide the issues of
19 fact based upon the evidence and only the evidence.

20 In this Internet world, resist the temptation -- not
21 that I think you're going to find anything, resist, it's
22 critical that you resist the temptation to do any Googling, or
23 searching or anything else about names or anything else you
24 hear in the course of this trial. It is critical that you
25 abide by that instruction and you refrain from doing that.

Judge's Preliminary Instructions

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1 Everything we've done up until now and everything we will have
2 done will be jeopardized by a careless, albeit good faith
3 effort, by a juror to look into some aspect of this case
4 online. We'll squander everything. It will ruin the
5 proceedings. I urge you do not engage in any sort of Internet
6 searches that may in any way be related to this trial. Okay.

7 Now, just so that we understand each other, no
8 statement, ruling, remark I make during the course of the
9 trial again is intended to indicate any opinion as to how you
10 should decide the case or to influence you, for that matter,
11 in any way. At times, I may ask questions of a witness. It
12 will be an exception rather than an everyday occurrence.
13 Indeed, I may ask no questions at all, but if I do, again, I'm
14 not sending signals; I may not have understood the witness'
15 response. At my age, I may not have heard the witness'
16 response. Okay. The witness may use a term that we haven't
17 heard before; I'll ask the witness, perhaps, to explain.
18 Whatever the case may be, if I ask a question, it's not a
19 signal to you, I'm just asking for clarification or whatever
20 the case may be. Okay.

21 And, finally, a couple of rules. I have to impose
22 them on you; I have to impose them on everybody else. We
23 don't sequester our jurors here in the federal court. You'll
24 be going home at night, but you are required by oath to follow
25 these rules first. Do not discuss the case either among

Judge's Preliminary Instructions

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1 yourselves or with anyone else. There a two parts to that.
2 One is quite obvious; don't talk to anybody about the case,
3 anybody you meet on the street, anybody you associate with the
4 trial, anybody at home. Perfectly understandable what
5 happened, what's the case about and so forth, perfectly
6 understandable. You can tell the folks at home I'm on a
7 criminal case, and I'll tell you all about it when the case is
8 over.

9 Again, good faith exchanges kind of information,
10 comments, may have a way of influencing people and we don't
11 want any of that. All right. No discussions with anyone
12 about the case. That's one part. The other part is a little
13 more interesting. No discussions among yourselves. Now that
14 seems a little peculiar, because, after all, that's what
15 juries do; but you won't do that until you've heard all of the
16 evidence, you heard the attorneys' summations, you've heard my
17 instructions, and you are together, alone in the jury room
18 behind a closed door. At no other time is there to be any
19 discussion about the case and all 12 of you all together.
20 I'll certainly repeat that when the time comes.

21 Resist the temptation, as you take a break, after
22 you've heard something you find interesting, to go into the
23 jury room and say, wow, isn't that something. Please, folks,
24 you got to hear all of evidence, you got to hear the Court's
25 instructions and attorneys' summations, and all 12 of you have

Judge's Preliminary Instructions

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1 to be together at the same time. That's the nature of the
2 deliberating process. Keep an open mind. If I were limited
3 to four words in these instructions, those would be the four
4 words; keep an open mind, reaching your conclusion only during
5 your deliberations, after you've heard the evidence, these
6 summations and the Court's instructions, and then only after
7 an opened exchange of views with your colleagues on the jury.

8 Do not permit any other person to discuss the case
9 in your presence. And if anyone does so, despite your telling
10 them not to, you are to report that fact to me as soon as you
11 are able, to Gabby or Ellen, but do not bring it to the
12 attention of your colleagues on the jury.

13 And, finally, we have five, I believe, alternate
14 jurors, obviously gentlemen, ladies -- ladies, I guess it is.
15 We invite your very careful attention, and in case of an
16 unforeseen emergency, or extended absence or other problem,
17 one which has already occurred, we will ask you to take the
18 place of a juror, and you'll be expected, of course, to
19 deliberate and with your fellow jurors. So please pay strict
20 attention at all times.

21 Please forgive the tutorial tone in my comments.
22 Many of these things are very, very important. We don't want
23 to jeopardize the effort that's gone into this, effort that
24 you are now a part of, the community of that effort. We,
25 again, appreciate your time and turn our attention now to the

Opening Statement - Demas

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1 United States Attorney for his opening statement. Or her
2 opening statement. Excuse me.

3 Ms. Demas.

4 MS. DEMAS: On March 19th, 2013, the defendant,
5 Bebars Baslan, and his girlfriend knocked on the door to room
6 765 at the Hyatt Hotel in Jersey City, New Jersey. At that
7 moment, the defendant was inches away from being able to do
8 what he'd been planning for over a month, sexually molest
9 young children and videotape them. The defendant went to that
10 hotel room because he thought there were three children
11 inside, a one-and-a-half year old boy named Ellie, a
12 three-and-a-half month old infant named Daniel and a drugged
13 seven-year-old girl named Leah.

14 The defendant believed these three children were
15 inside that hotel room because he had planned all of the
16 details of that night with the man who was Ellie and Daniel's
17 father and Leah's uncle. Earlier that day, the defendant gave
18 Benadryl to this man, and he told him exactly how much
19 Benadryl to give to Leah so that she'd be passed out by the
20 time the defendant got there. This seven-year-old girl needed
21 to be passed out because the defendant planned to sexually
22 molest her.

23 Ladies and gentlemen -- these are his words, not
24 mine -- the defendant said that he wanted to, quote, "go down
25 on Leah." He was going to take pictures of her genitals and

Opening Statement - Demas

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1 videotape his girlfriend and coconspirator, Kristen Henry,
2 performing sex acts on Ellie and Daniel. There is one thing
3 the defendant did not know; he did not know that Ellie and
4 Daniel's father and Leah's uncle had tipped off the FBI to
5 this disgusting plot and had been recording the defendant's
6 plans for over a month. So when the defendant and his
7 girlfriend went inside that hotel room with the intention of
8 molesting these three children, the FBI was standing right
9 behind them and arrested them.

10 The defendant's attempt to sexually exploit these
11 three children is why we're here today. Good morning. My
12 name is Tiana Demas. I'm an Assistant U.S. Attorney here at
13 the Eastern District of New York. Seated at the government's
14 table is Assistant U.S. Attorney Tyler Smith, Special Agent
15 Aaron Spivack of the FBI, and Paralegal Specialist Tareba
16 Torres. We represent the government.

17 Let me take a step back to about two months before
18 the defendant's arrested. In late January 2013, the man who
19 is Daniel and Ellie's father and Leah's uncle went to the
20 police and told them about the defendant. And just to be
21 clear, this is one man; he was the father of two of the
22 children and the uncle of the third. In February, this man
23 met with the FBI, and he became what is called an "informant."
24 The informant agreed to wear a wire, and he lawfully recorded
25 his conversations with the defendant and the defendant's

Opening Statement - Demas

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1 girlfriend, Kristen Henry, for almost a month.

2 During these conversations, when the defendant did
3 not know he was being recorded, he talks about his evolving
4 plan to molest these three children and then move on to
5 others. The plan started with the defendant's idea of taking
6 what he called a, quote, "safety picture" of Kristen Henry,
7 his coconspirator, performing oral sex on Daniel or Ellie.
8 The defendant needed this safety picture to guarantee that
9 Kristen Henry wouldn't go to the police and that she wouldn't
10 back out when the defendant moved on to his real goal,
11 drugging and sexually molesting multiple children and taking
12 videos of it.

13 Here is how the defendant describes that safety
14 picture on one of the recordings: These are his words, not
15 mine. Quote, "She's just going to be pretending to diaper
16 change him and just take a couple of pictures of her sucking
17 him off. That's it."

18 This is what the defendant said about how you can
19 sexually molest a child and not get caught. Quote, "I mean,
20 you could have anal with the kid and it wouldn't be a problem,
21 like won't leave any marks or anything. Just vaginally, you
22 can't."

23 The defendant also talked about what he was going to
24 do to Leah, the informant's seven-year-old niece. Quote,
25 "take pictures. You know, touch. I'm going to go down on

Opening Statement - Demas

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1 her. That's pretty much what I want out of the whole thing."

2 And the defendant had no intention of stopping with
3 Leah. Again, these are his words, not mine. Quote, "Leah is
4 more of a stepping stone for us to, like, once you do it, then
5 that's it. The trust is there."

6 The defendant did not just talk about sexually
7 molesting children; he took substantial steps, concrete steps,
8 to achieve this goal. On March 18th, the defendant learned
9 that the next day the informant was going to be at a hotel in
10 Jersey City with Leah, Daniel and Ellie. So the defendant got
11 prepared. He told the CI -- excuse me -- the informant
12 exactly how to drug Leah, the seven year old, so that she'd
13 be, quote, "passed out, asleep," so there would be no chance
14 of her remembering.

15 The defendant said that he would take care of
16 getting the drugs to make sure that Leah was passed out when
17 he molested her. The defendant said he would get the
18 Benadryl, and he told the informant exactly how much Benadryl
19 to give Leah. The defendant said that he wasn't going to stay
20 over at the hotel that night because he doesn't want to risk
21 Leah waking up and seeing him or his coconspirator, Kristen
22 Henry. The defendant even discussed the particular camera
23 that he was going to bring with him to videotape the sexual
24 molestation of these children, a DSLR HD camera that was, in
25 his words, fully charged, fully loaded.

Opening Statement - Demas

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1 And the defendant made clear on these recordings
2 that his face would not be on any of the pictures or videos
3 that he planned to take at the hotel. He said, quote, "Don't
4 worry, man, no face. Just like I said, Kristen's face and my
5 dick's face, too."

6 On March 19th, the day after the informant had told
7 him about that hotel in New Jersey, the defendant did exactly
8 what he said he was going to do; he sent Kristen Henry, his
9 coconspirator, to a drug store to buy Benadryl and juice. The
10 defendant called the informant and told him he had the
11 Benadryl. The defendant gave the informant the Benadryl and a
12 bottle of orange juice to mix it in so Leah wouldn't be able
13 to taste it. The defendant told the informant to get rid of
14 the Benadryl after he'd given it to Leah, because having a
15 bottle of children's Benadryl was, in the defendant's words,
16 "very obvious."

17 The defendant told the informant to tell him the
18 address of the hotel on the phone and not to text it. He gave
19 the informant code words to use on the phone, to indicate to
20 the defendant that the informant was at the hotel with the
21 three kids, as planned. And the defendant even told the
22 informant that when checking into the hotel, he should leave
23 the kids in the car to avoid suspicion. Later that night, the
24 informant called the defendant, gave him that code phrase that
25 meant that he was at the hotel with Leah, Daniel and Ellie.

Opening Statement - Demas

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1 You're going to hear the defendant in recorded
2 conversations asking how long it was going to take him to get
3 from his apartment in Brooklyn to that hotel in Jersey City.
4 And within an hour and a half of learning that the informant
5 was at the hotel with the three kids, the defendant and
6 Kristen Henry drove to the hotel, parked their car and went up
7 the elevator with the intention of doing exactly what the
8 defendant said he was going to do, sexually molest these
9 children and take pictures and videos of them.

10 For his conduct, the defendant is charged with four
11 crimes. The first is traveling with the intent to commit
12 aggravated sexual abuse of a minor less than 12 years of age,
13 and that is the crossing of state lines, from New York to
14 New Jersey, for the purpose of sexually molesting Leah and
15 having Kristen Henry perform oral sex on Daniel. The second
16 count, conspiracy to sexually exploit a child. That is for
17 agreeing with Kristen Henry, his girlfriend and coconspirator,
18 to sexually molest, Leah, Daniel and Ellie and to videotape
19 it.

20 The third count is attempt to sexually exploit a
21 child, and that is for attempting or taking a substantial step
22 towards sexually molesting these three children and
23 videotaping them. The fourth count is attempted coercion and
24 enticement of a minor to engage in illegal sexual activity.
25 That is for using the telephone to coerce these three

Opening Statement - Demas

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1 children, through their guardian, the informant, to engage in
2 sexual activity that is illegal under New York or New Jersey
3 law.

4 During this trial, we will prove beyond a reasonable
5 doubt that the defendant committed these crimes. We will
6 prove this through physical evidence and witness testimony.
7 You're going to hear the defendant on lawfully recorded phone
8 calls and in-person meetings saying exactly what he was going
9 to do once he got inside that hotel room. You're going to see
10 the camera he was carrying with him when he went to that hotel
11 room, a DSLR HD camera, fully charged, fully loaded, just like
12 he said. He also had a laptop with him and an iPhone that was
13 capable of recording videos. You will see the Benadryl that
14 Kristen Henry, his coconspirator, purchased.

15 You're also going to see text messages between the
16 defendant and Kristen Henry earlier, from the day of their
17 arrest. You're also going to see the physical evidence that
18 FBI agents seized when they searched the defendant's apartment
19 in Brooklyn at the same time he was being arrested in
20 New Jersey. They found computers, encrypted hard drives,
21 camera equipment. You're going to hear from the FBI agents
22 who processed this evidence. You're going to learn that they
23 broke the encryption on one of the hard drives. And on this
24 hard drive, there were tens of thousands of images and videos
25 of children being sexually abused, child pornography. You

Opening Statement - Savitt

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1 will see some of these horrific videos and images during
2 trial. After you have seen and heard all of the evidence, we
3 will ask you to return the only verdict consistent with that
4 evidence, and that is a verdict of guilty on all counts.

5 THE COURT: All right. Thank you, Ms. Demas.

6 Mr. Savitt.

7 MR. SAVITT: Thank you, your Honor. May it please
8 the Court and Members of the Jury, I have a confession to
9 make, and that confession is that this is a very difficult and
10 hard case for everybody involved in this process. The charges
11 against my client are serious, beyond any doubt. The
12 statement by the prosecutor to you, eloquently delivered,
13 might lead you to conclude that my client is guilty and that's
14 it, that he's some sort of a monster that was going to abuse
15 babies and children on March 19th of last year; that his voice
16 is captured on tape speaking to an informant.

17 And there are a lot of tapes. There are hours and
18 hours of conversation. Only a few vignettes were presented to
19 you by the prosecutor. But you're going to see, I can predict
20 and hear, those tapes in full. It's a very difficult thing
21 for any of us not to rush to judgment when we hear something
22 like this. It's a very, very hard process when you look at
23 child pornography, which is disgusting, and then look at a
24 defendant seated in this courtroom and say, my goodness, what
25 are we all doing here? Why go through this process? This man

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1 a guilty, he's a monster and that's that.

2 You know, we went through a very difficult and long
3 jury selection process yesterday. Without getting into
4 details, you saw a lot of jurors were excused. It's a very
5 difficult case. It's very difficult to keep an open mind when
6 you've got these kind of charges. But as Judge Dearie just
7 explained to you, your job is to keep an open mind. Your
8 responsibility is to judge the case fairly. Your
9 responsibility is also not to rush to judgment and not to come
10 to any determination until you're all gathered together in the
11 jury room, having heard all of the evidence, all of it, all of
12 it, not just little portions of it and after Judge Dearie has
13 instructed you on the legal principals and rules to guide you
14 in evaluating what really happened on March 19th of last year.

15 Now, as the judge told you, the defense has no
16 burden in any criminal case. We don't have a burden to even
17 make an opening statement. We don't have to cross-examine
18 witnesses. We don't have to introduce evidence. My client
19 does not have a burden to take the stand. And, in fact, if he
20 didn't take the stand, you wouldn't be permitted to consider
21 that against him. Mr. Baslan is taking the stand in this
22 case, ladies and gentlemen. We are going to put him on for
23 the defense. We are going to be cross-examining witnesses.

24 And let me give you a few of the defense vignettes,
25 just for your consideration, because this is an opening

Opening Statement - Savitt

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1 statement. It's not a summation, and it's certainly not
2 evidence, and I'm not a witness. I'm an advocate, just as the
3 prosecutors are an advocate for a party. How about one
4 vignette, the cooperate for in this case, the father of two
5 babies, the uncle of the little girl, he becomes part of a
6 government sting against my client and against his girlfriend
7 Kristen Henry. Imagine that, a government cooperator using
8 his own children and niece as bait.

9 Consider the following as well about the cooperator,
10 things that you haven't heard yet from the prosecution, but
11 you will hear, if it doesn't come out on direct examination by
12 the government, you will hear this on cross-examination, this
13 cooperator, Jack, has got a history of psychiatric problems.
14 He has bipolar disorders. He's on a host of medications for
15 years. He has a history of violence. He beats people up. He
16 lies. He's on drugs. He commits sexual assaults against
17 underaged girls. He was committed to psychiatric institutions
18 on at least five occasions. He attempted to commit suicide,
19 by his own admission, on eight or nine occasions. This is a
20 very sick man. This is the government's witness.

21 The government is going to ask you at the end of
22 this trial to rely on this person and his version of the
23 events and accept that to convict my client. He's going to be
24 taking the stand in this trial, and I very safely predict, and
25 it will be your job to evaluate him not only on direct

Opening Statement - Savitt

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1 examination by the prosecutor but also on cross-examination.
2 Your job will be to determine whether or not he's a reliable
3 witness, whether he lies, whether he's a criminal, whether he
4 himself is a child molester; whether a person so sick and so
5 bizarre and, frankly, so disgusting, who can't tell the truth
6 if it slapped him across the face can be believed to convict
7 anyone beyond a reasonable doubt.

8 Yes, there are tapes out there, and there are other
9 portions of the tapes that will make no sense, because it
10 doesn't fit within the government's strict of what my client's
11 intent was when he crossed state lines. Jack, the informant,
12 with his two little babies, who are supposed to be part of a
13 plan of molestation and his niece, you can ask yourselves how
14 did it come about Jack to use his own children for this
15 bizarre plan? I mean, the thought of it: There's a lot more
16 to this case than meets the eye, and there's certainly a lot
17 more depth and complexity to this case than the prosecutor's
18 very eloquent opening statement would suggest.

19 Consider, for instance, my client and Kristen Henry
20 were boyfriend/girlfriend. Why would anybody need -- why
21 would he need to have some sort of -- some sort of a blackmail
22 tool over his girlfriend not to go to the police if they're
23 co-conspirators, is they're supposed to be opening up some
24 sort of a business to molest children on a regular basis? Who
25 needs to have this kind of hammer over a coconspirator? You

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1 know, it doesn't make any sense. But it will make a lot more
2 sense to you once you've heard answers on cross-examination.
3 Once you've heard the defense case, that will make sense to
4 you; and then you will have not just one side of the coin,
5 you're going to have both sides of the coin to consider.

6 This is not a case where I'm going to ask you
7 whether or not you can believe the government's cooperator.
8 And I take no issue with law enforcement witnesses. This is a
9 case where you'll be asked to determine what really happened.
10 And I will tell you, as you probably know already, that this
11 is a very bizarre case. It's disturbing. It's weird. And I
12 doubt that you're going to like either the cooperator or my
13 client when this case is over.

14 I will also tell you that in terms of the child
15 pornography found on my client's computer, that you will hear
16 that we're not contesting that. Obviously we can't contest
17 it. But from the very moment that my client was arrested on
18 March 9th, he admitted the child pornography, and that's
19 pretty awful for him to have on computer. You will hear that
20 there are something like 14,000 images, terabytes worth of
21 this type of dirt. And if you have any person sick enough to
22 look at this stuff, and to download it and to watch it would
23 have to be as old as the biblical Methuselah in over
24 700 years, probably, of day-and-night watching this stuff. My
25 client didn't watch this stuff day and night. Some of it was

Opening Statement - Savitt

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1 downloaded and watched by Mr. Jack. But a very keen interest
2 in child pornography.

3 So as you're analyzing the evidence, as you're
4 listening to the witnesses, the first thing you're going to
5 hear is the government's presentation. The government goes
6 first. The government makes the opening statement first. The
7 government has the burden of proof. After that, we will
8 present a defense case to you, and you will have a choice, an
9 option. And it's not just a question of whom do you believe,
10 it's a question of whether or not you believe, unanimously,
11 after reviewing all of the evidence, in light of the law as
12 instructed to you by the judge that the government has proven
13 its case against my client beyond a reasonable doubt.

14 And I suggest to you in the final analysis that you
15 will decide the answer is no. I thank you for your jury
16 service, for the seriousness in which you take this case, for
17 keeping an open mind and for waiting until the process is over
18 before you decide whether the government proved its case.

19 THE COURT: Thank you, Mr. Savitt.

20 Our first witness, please.

21 MR. SMITH: Your Honor, if we can approach at
22 sidebar with respect to this witness?

23 THE COURT: Sidebar.

24 (Sidebar - Outside the presence of the jury.)

25

1 MS. DEMAS: This is the witness who indicated he had
2 seen a juror in the hallway and believed he knew her from
3 growing up, and the Court asked us to raise this at a break.

4 THE COURT: They can confirm or deny he knows her.
5 After that, I'll inquire do we know the juror.

6 MS. DEMAS: It's a female juror.

7 THE COURT: Just go ahead, sir.

8 (Sidebar concluded.)

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Torres - Direct - Smith

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1 (In open court - In the presence of the jury.)

2 THE COURT: Just go ahead, sir.

3 MR. SMITH: The government calls Detective Frank
4 Torres.

5 THE COURT: Detective Frank?

6 MR. SMITH: Frank Torres.

7 THE COURT: Torres.

8 THE CLERK: Please raise your right hand. Do you
9 solemnly state that the testimony you're about to give will be
10 the truth, the whole truth and nothing but the truth?

11 THE WITNESS: I do.

12 THE CLERK: State your name for the record.

13 THE WITNESS: Detective Frank Torres.

14 FRANK TORRES,
15 called as a witness, by an on behalf of the government, having
16 been first duly sworn, was examined and testified as follows:

17 THE COURT: All right. Sir, have a seat.

18 THE WITNESS: Thank you.

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q Good morning, Detective Torres.

22 A Good morning.

23 Q Who do you work for?

24 A New York City Police Department.

25 Q What's your title?

Torres - Direct - Smith

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1 A Detective, Third Grade.

2 Q How long have you been a detective for the New York City
3 Police Department?

4 A Over six-and-a-half years, plus a year and a half in
5 training. Eight years total.

6 Q Are you assigned to a particular location?

7 A Yes.

8 Q What's that location?

9 A The 66 Precinct, located in Brooklyn.

10 Q What are your duties as a detective assigned to the 66
11 Precinct?

12 A I investigate all complainants left open to detective
13 squads by patrol.

14 Q What types of crimes do you investigate?

15 A Robberies, homicides, assaults, larcenies, and all other
16 types of crimes.

17 Q Do you interview people who come into the precinct with
18 complaints?

19 A All the time.

20 Q Approximately how often do you interview people?

21 A Almost every day I work.

22 Q As part of that process, do you regularly observe the
23 demeanor of people you're interviewing?

24 A Yes, I do.

25 Q Detective, were you working on January 27th, 2013?

Torres - Direct - Smith

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1 A Yes.

2 Q Do you remember what your shift was that day?

3 A I was working at p.m., from 16:00 hours to 01:00 hours,
4 in the morning.

5 Q Was that 4:00 p.m. to 1:00 a.m.?

6 A Yes.

7 Q During that day, did you interview a person who walked
8 into the 66 Precinct?

9 A Yes.

10 Q Can you tell the jury how you came to be interviewing
11 that individual?

12 A I had somebody from the front of the precinct come in
13 that works as a police officer to say that --

14 MR. SAVITT: Objection, your Honor.

15 THE COURT: This is just for background. Overruled.

16 THE WITNESS: I had a police officer that came into
17 the detective squad and said the gentleman had walked in, that
18 he wanted to make a complaint, and I told him I would be out
19 and I would interview him.

20 Q Do you remember what his first name was?

21 A Jack.

22 MR. SMITH: If we can turn the document camera on
23 for the witness?

24 Q Showing you what's been marked as Government Exhibit 45,
25 do you see it up on the screen?

Torres - Direct - Smith

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1 A No.

2 MR. SMITH: If I can approach, your Honor?

3 THE COURT: Go ahead. Don't tell me we're having
4 technical problems.

5 THE CLERK: Nothing.

6 THE COURT: Identify the document for me, if you
7 would.

8 MR. SMITH: Government Exhibit 45.

9 Q Do you recognize that?

10 A Yes.

11 Q What is it?

12 A He's the gentleman who came to the precinct to make the
13 complaint.

14 Q It's photograph of that gentleman?

15 A Yes.

16 MS. DEMAS: Government offers Government Exhibit 45.

17 MR. SAVITT: No objection.

18 THE COURT: Received.

19 (Government's Exhibit 45 was received in evidence.)

20 MS. DEMAS: I'll publish for the jury.

21 THE WITNESS: It's on, but there's no picture.

22 Q Now, after Jack came into the precinct, on January 27th,
23 what did you do with it?

24 A I went out, got Jack and brought him back into the
25 Detective squad room and placed him into the interview room.

Torres - Direct - Smith

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1 Q Was he currently under investigation by the NYPD when you
2 met with him?

3 A No.

4 THE COURT: Did you know him at all?

5 THE WITNESS: No.

6 Q What did you -- what'd you do after you put Jack in an
7 interview room?

8 A I conducted an interview.

9 Q Can you describe -- without going into the details of
10 what he said, can you describe what his physical demeanor was
11 when you were talking to him?

12 A When he came in, I told him to sit down. He sat down.
13 He was very agitated. He was amped up. I felt he was on
14 something. He was a little angry, and he kept on trying to
15 stand up. I told him to sit down, be calm. And he would
16 punch his hands into his fists, and he was very agitated.

17 Q Without going into the details of what he told you, was
18 the complaint relating to a specific topic or type of crime?

19 A Yes.

20 Q What was the general type of crime?

21 MR. SAVITT: Your Honor, I object to this.

22 THE COURT: No, I'm going to permit it. I mean, I
23 understand the objection. Statements made by Jack to the
24 detective in the precinct are hearsay. His statements out of
25 court, they're not to be considered by you for the truth of

Torres - Direct - Smith

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1 anything Jack may have said. This is providing some
2 background to you as to how Jack came to the attention of this
3 detective, the police department, presumably other
4 authorities. So we're not going to have a lot of statements
5 about what Jack said. To the extent that anything that the
6 detective said to suggest a statement that Jack may have said,
7 like a topic, for example, is not to be considered by you for
8 the truth of what Jack said. It's not evidence of that.
9 Okay.

10 Go ahead. And let's get through this quickly.

11 Q What was the general topic?

12 A Sex crime.

13 Q Did you interview him on one occasion, on that day, or
14 more than one occasion?

15 A More than once.

16 Q Approximately how long was the first interview?

17 A Approximately 30 minutes.

18 Q What did you do after that 30-minute interview?

19 A I asked him for his ID. I told him to stay inside the
20 room, that I would be back in a little bit and asked him a
21 couple more questions.

22 Q Why'd you do that?

23 A Usually any person I interview, I just run his
24 background, you know, just to make sure he's not wanted on a
25 warrant.

Torres - Direct - Smith

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1 Q Approximately how long a break did you take?

2 A About 30 minutes.

3 Q What did you do after that 30-minute break?

4 A I came back into the room, and I started another
5 interview with the complainant.

6 Q What was his demeanor during that interview?

7 A The same.

8 Q Did he make any offers to you?

9 A Yes.

10 Q What offers?

11 A He said he wanted to help with the case; he would do
12 anything that was necessary, that he would wear a wire. He
13 would let them -- he would let anybody go up in his cell
14 phone, like tap his cell phone, to use his cell phone records
15 and assist in any way possible with the case.

16 Q Did you give Jack any instructions?

17 A Yes.

18 Q What instructions did you give him?

19 A I told him that he's not allowed to contact the
20 perpetrator in any form; physically, by mail, electronic mail,
21 texting. I did not want him to go over to the guy's house. I
22 wanted him to have no contact, and I didn't even want him to
23 get somebody to go and talk to the guy either.

24 Q What, if anything, did you do after you interviewed Jack,
25 on those two occasions, on January 27th?

Torres - Direct - Smith

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1 A I called Special Victims, and they told me they don't
2 handle this particular type of case, and they gave me the
3 number to call Vice.

4 Q What is Vice?

5 A Vice is a unit that deals with prostitution, organized
6 rings, and sex crimes and so forth.

7 Q Did you ultimately call Vice?

8 A Yes.

9 Q What happened?

10 A I told them everything that the complainant had told me,
11 and they said okay. They gave me a log number. And they told
12 me that they would contact Jack, and that was it. I wrote the
13 log number down. I had kept it for a couple of months, and I
14 don't have the log number no more, and I never heard again
15 from Jack or Vice.

16 Q Did you tell Jack anything after you contacted Vice?

17 A I told him that, again, not to go and see the perpetrator
18 at all, have no contact and to be ready; that vice will be
19 calling him, and they'll be conducting an interview, and
20 they're taking the case on it and they're going to run with
21 it.

22 Q Why did you instruct Jack not to contact the perpetrator?

23 A From what he had told me, I felt that if Jack would go
24 over there, you know, there could --

25 MR. SAVITT: Objection to this.

Torres - Direct - Smith

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1 THE COURT: I'll permit it. Go ahead.

2 THE WITNESS: I felt there could have been some type
3 of physical altercation or something worse could have
4 happened, so I told him to stay away at all costs.

5 MR. SMITH: No further questions.

6 THE COURT: Mr. Savitt, any cross?

7 MR. SAVITT: Yes.

8 CROSS-EXAMINATION

9 BY MR. SAVITT:

10 Q Good morning, Detective Torres.

11 A Good morning.

12 Q You're assigned to the 66?

13 A Yes.

14 Q And you told us about events that happened on January the
15 27th of 2013, correct?

16 A Yes.

17 Q Did you review any of your reports before testifying here
18 today?

19 A I have no reports.

20 Q So you're testifying purely on your memory of events that
21 occurred a year-and-a-half ago; am I right?

22 A Correct.

23 Q Since that time, were you involved in any other
24 investigations or nacence (phonetic) investigations that you,
25 ultimately, either conducted or didn't conduct? Any other

Torres - Cross - Savitt

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1 cases?

2 A I catch cases on a regular basis.

3 Q All right. So how many cases you had during that last
4 time, in the last year and a half?

5 A Approximate?

6 Q Yeah, give me an approximate, please.

7 A 200 plus.

8 Q All right. And every case has different details, and
9 different actors and different perpetrators, right?

10 A Correct.

11 Q And you remember all of the details of all these
12 200 cases?

13 A No.

14 Q Now, let me ask you this, this fellow who came in, the
15 complainant, Jack, had you ever met him before?

16 A No.

17 Q Since January the 27th of 2013, you ever meet him again?

18 A About a week ago, week-and-a-half ago.

19 Q A week-and-a-half ago. Where did you meet Jack a
20 week-and-a-half ago?

21 A I was exiting the D.A.'s Office.

22 Q You mean the U.S. Attorney's Office, the office right
23 here?

24 A Yes.

25 Q And that's across the street, near the courthouse, right?

Torres - Cross - Savitt

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1 A Yes.

2 Q And you saw Jack?

3 A Yes.

4 Q And was he exiting, or was he coming in?

5 A He was standing by the door.

6 Q By which door?

7 A The door that's locked into the USDA's Office.

8 Q All right. So he's waiting to be let in, right?

9 A Correct.

10 Q Did you have a conversation with him?

11 A No.

12 Q Did you say hi to him?

13 A Yes, I shook his hand.

14 Q You shook his hand, and that was it?

15 A That's it.

16 Q Apart from shaking Jack's hand a week-and-a-half ago, and
17 what you've told us about that occurred a year-and-a-half ago,
18 you had absolutely no contact with Jack, right?

19 A None.

20 Q You weren't involved in an investigation of the case
21 here, were you?

22 A No.

23 Q So when you used the word "case" in your direct
24 examination, that's a figure of speech, it's not like you
25 opened the case, right?

1 A I did not open a case, no.

2 Q And when you used the word "perpetrator," that's sort of
3 police jargon for somebody that the complainant is talking
4 about, right?

5 A Correct.

6 Q And so when you use the word "perpetrator," you're not
7 suggesting that somebody committed a crime? Correct me if I'm
8 wrong, you're suggesting that the complainant is saying that
9 that person committed a crime; am I correct?

10 A Yes.

11 Q Now, you said that this fellow Jack was very agitated and
12 very pumped up; am I right?

13 A Yes.

14 Q He was angry, correct?

15 A Yes.

16 Q Kept on punching his hand into his fists?

17 A Several times.

18 Q And you thought that he might be on some sort of a
19 substance?

20 A Yes.

21 Q He didn't appear to be normal?

22 A He appeared to be amped up.

23 Q Amped up. And when you say "amped up," are you
24 suggesting that based on your experience he looked like he was
25 on some sort of a drug, at that point, right?

Torres - Cross - Savitt

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1 A Yes.

2 Q And of course you wanted to check up on Jack and to see
3 his background, because not every complainant comes in all
4 amped up; am I right?

5 A That's true. I check everyone's, too.

6 Q And when you checked Jack's background, you knew his last
7 name, though, I would imagine?

8 A Yes.

9 Q Did he give you any form of ID?

10 A I think he gave me his driver's license.

11 Q When you say you think, are you sure?

12 A I'm not positive.

13 Q All right. But that would be standard operating
14 procedure, right?

15 A Some type of photo ID, yes.

16 Q And you checked whether there was a background on him.
17 And was there a background on him?

18 A Either I checked, or one of my partners that I was
19 working with that day checked.

20 Q Okay. Was there any hit?

21 A He didn't have a warrant.

22 Q Did he have any priors?

23 A I don't remember.

24 Q Did you ask Jack, yes or no, whether or not he was on
25 drugs?

1 A No.

2 Q How long was Jack in this agitated state in your
3 presence, Detective, approximately?

4 A Most of the time.

5 Q Most of the time. Kind of jumping around, and punching
6 his fist in his hand and stuff like that, right?

7 A While sitting down, yeah.

8 Q By the way, this, quote unquote, "perpetrator," did he
9 give you the name of a perpetrator?

10 A Yes.

11 Q Do you remember the name of the perpetrator?

12 A No.

13 Q Do you remember whether or not you or one of your fellow
14 officers ran a background check on the perpetrator?

15 A I do not remember.

16 MR. SAVITT: Thank you very much, Detective.

17 No further questions.

18 MR. SMITH: Couple of things, your Honor.

19 REDIRECT EXAMINATION

20 BY MR. SMITH:

21 Q Detective, Mr. Savitt asked you about how many cases you
22 had in the past year; do you remember that?

23 A Yes.

24 Q Did this particular complaint stand out in your mind
25 apart from those 200 cases?

Torres - Cross - Savitt

55

1 A Definitely.

2 Q Why is that?

3 A From what he told me, some things just -- you just
4 remember. Certain cases you just don't forget.

5 Q You said -- you said that you interviewed him on two
6 different occasions on the same day; is that right?

7 A Yes.

8 Q Did you compare the two times you spoke to him.

9 A Yes.

10 Q Did you find his statements to be consistent?

11 A Consistent and very detailed.

12 MR. SMITH: No further questions.

13 MR. SAVITT: Just very briefly.

14 RECROSS-EXAMINATION

15 BY MR. SAVITT:

16 Q When you just told us that you found the complainant's
17 statements to be consistent, did you compare that to any other
18 outside proof to see whether or not he's telling you the
19 truth?

20 A No.

21 Q So all you had to go by was what it was that the
22 complainant was telling you, right?

23 A Correct.

24 MR. SAVITT: No further questions.

25 THE COURT: Thank you, Detective. You may step

1 down.

2 Next witness, please.

3 THE WITNESS: Thank you, sir.

4 MS. DEMAS: The government calls Detective Damon
5 Gergar.

6 THE CLERK: Do you solemnly swear the testimony
7 you're about to give will be the truth, the whole truth and
8 nothing but the whole truth?

9 THE WITNESS: I do.

10 THE CLERK: Please state your name for the record.

11 THE WITNESS: Detective Damon Gergar, Shell Number
12 2783, NYPD.

13 THE CLERK: Spell your last name.

14 THE WITNESS: G-e-r-g-a-r.

15 THE CLERK: Please be seated.

16 THE COURT: I'm sorry, G-e-r --

17 THE WITNESS: And then g-a-r.

18 THE COURT: G-e-r-g-a-r?

19 THE WITNESS: Correct.

20 THE COURT: Damon?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: All right.

23 DAMON GERGAR,
24 called as a witness by and on behalf of the government, having
25 been first duly sworn, was examined and testified as follows:

Gergar - Direct - Demas

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1 DIRECT EXAMINATION

2 BY MS. DEMAS:

3 Q Good morning, Detective Gergar.

4 A Good morning.

5 Q Who do you work for?

6 A The New York City Police Department.

7 Q Do you work in a particular unit within the NYPD?

8 A Yes, the Vice Major Case Unit.

9 Q What's your title?

10 A Detective.

11 Q What kind of cases does the Vice Major Case Squad handle?

12 A We handle sex trafficking, human trafficking, underaged
13 prostitution cases. And I handle the child pornography and
14 pedophile investigations.

15 Q How long have you been with the Vice Major Case Squad?

16 A Since January 2009.

17 Q How long have you been with the NYPD in total?

18 A Since July of 1999.

19 Q Did you ever become involved in the investigation of a
20 person by the name of Bebars Baslan?

21 A I did.

22 Q How did you first become involved in that investigation?

23 A I received a complaint from my sergeant that -- had a
24 complainant by the name of Jack, who I initially spoke with.

25 Q And do you recall the date on which you received that

Gergar - Direct - Demas

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1 complaint from your sergeant?

2 A I believe it was February 6th of last year.

3 Q Of 2013?

4 A Correct.

5 Q Now, you mentioned the complainant's name was Jack; was
6 that right?

7 A Correct.

8 Q And showing you what's in evidence as Government Exhibit
9 45, do you see this on the screen in front of you?

10 A Yes.

11 Q Do you recognize the person in this photograph?

12 A I do.

13 Q Who is it?

14 A That would be Jack.

15 Q Now, when you received this complaint from your sergeant,
16 did you know from where within the NYPD the complaint had
17 originated, meaning, like, which squad or precinct?

18 A Yes, it would have been on the original complaint.

19 Q Do you not recall, sitting here today, which squad that
20 was?

21 A I believe it was the 66.

22 Q And are you aware of which NYPD officer or detective
23 first took that complaint?

24 A Yes.

25 Q Who?

Gergar - Direct - Demas

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1 A I believe it was -- you know, could I look at the
2 original complaint? I don't want to say the wrong name.

3 MS. DEMAS: I'm handing the witness what's been
4 marked 3500DG-1.

5 THE WITNESS: This is my first DD-5, and I just -- I
6 wrote a male complainant visit to the 66 squad on
7 January 27th. I do not have this detective's name. It's on
8 the original complaint that was generated by the FOD.

9 Q Do you think you would remember the detective's name if I
10 asked you?

11 A Yes.

12 Q Was it Detective Torres?

13 A Yes. Thank you.

14 Q Now, did you take any actions with respect to this
15 complaint you received February 6th, 2013?

16 A Yes.

17 Q What actions did you take?

18 A I called the complainant, Jack.

19 Q Did you speak to him?

20 A Yes.

21 Q On what day did you first speak to Jack?

22 A The day I received the complaint, on February 6th.

23 Q And approximately how long did you speak to Jack on that
24 date?

25 A We talked a good bit.

Gergar - Direct - Demas

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1 THE COURT: This is over the phone?

2 THE WITNESS: Yes, over the phone, in my office.

3 Minimum 10 minutes. Probably between 10 and 20 minutes. It
4 was a good conversation.

5 Q Without going into the substance of what Jack told you,
6 were there particular people or a person he told you about?

7 A Yes.

8 Q What person or people are those?

9 A The name he told me is Bebars Baslan and his girlfriend.

10 Q For the sake of clarity, when you say "and his
11 girlfriend," do you mean Jack's girlfriend or Bebars Baslan's
12 girlfriend?

13 A Bebars' girlfriend.

14 Q And without going into the substance of what Jack told
15 you, was there a particular crime or crimes that whatever he
16 told you on the telephone related to?

17 A Yes.

18 Q What crimes were those?

19 A Child pornography, sex abuse and child rape.

20 Q Now, did you give Jack any guidance when you spoke to him
21 on February 6th, 2013?

22 A Yes.

23 Q What did you tell him?

24 A I would have told him to -- if he sees Bebars again, just
25 to act normal; don't do anything that would raise him up, and

Gergar - Direct - Demas

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1 don't do anything illegal if you're in the presence of Bebars.

2 Q Why did you give him those instructions?

3 A When I initially talked to him, he was very emotional,
4 angry, amped up, very, like, gung ho, so I had to calm him
5 down a little bit, just tell him not to do anything crazy. I
6 think he wanted to bring him in right away.

7 Q Did you give Jack -- did you tell Jack what, if anything,
8 you were going to do about the case?

9 A Yes.

10 Q What did you tell him?

11 A I told him I was going to speak to my supervisors and
12 also try to go federal with the case and contact a friend of
13 mine in the FBI; and that I would take it from there, and that
14 I would get back in touch with him when I found out from my
15 boss what exactly they wanted me to do.

16 Q Now, after you spoke to Jack on February 6th, 2013, did
17 you take any further action with respect to this
18 investigation?

19 A Yes.

20 Q What did you do?

21 A I contacted Special Agent Spivack at the FBI, after
22 conferring with my bosses, if we can go federal with the case.
23 I contacted him, told him what I have, in regards to the
24 conversation I had with Jack, and he expressed interest in
25 taking the case.

Gergar - Direct - Demas

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1 Q He being Agent Spivack?

2 A Correct.

3 Q By the way, do you see Agent Spivack in court today?

4 A Yes.

5 Q Where's he sitting?

6 A Right there with the red tie on.

7 THE COURT: Sitting at counsel table, indicating
8 Mr. Spivack.

9 Go ahead.

10 Q Did you eventually get approval from your supervisor to
11 "go federal" with this case or work with the FBI?

12 A I did.

13 Q Do you remember when you got that approval?

14 A I believe it was on June 12th. May I look at the --

15 Q Sure. Did you say June, though?

16 A I'm sorry. February 12th. Just let me double-check on
17 the DD-5. Correct. February 12th, I spoke to Special Agent
18 Spivack.

19 Q Do you recall when you spoke to Special Agent Spivack?

20 A It was on February 12th. I don't recall the exact time.

21 Q And did you speak to Agent Spivack by phone or in person?

22 A By phone, initially.

23 Q And what was the next thing that you did, with respect to
24 this case, after speaking to Agent Spivack?

25 A I was able to coordinate a meeting with the complainant

Gergar - Direct - Demas

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1 Jack and Agent Spivack.

2 Q When did that meeting -- or was it supposed to take
3 place, if you know?

4 A Look at my notes. It was on February 13th, 2013.

5 Q When you say set up that meeting, what did you do to set
6 it up?

7 A I would have asked Agent Spivack when a good time, a date
8 to meet the complainant. I also would have asked the
9 complainant when a good time is for him, and I just coordinate
10 between them, and they got it done pretty fast.

11 Q And did you actually attend that meeting the following
12 day, on February 13th, 2013, between Special Agent Spivack and
13 Jack?

14 A No, I did not.

15 Q Why is that?

16 A That day, I actually started my tour, I believe, at
17 2:30 p.m. We had operations with other members of my team
18 that day, an undercover operation.

19 Q Meaning, you couldn't do both?

20 A Correct.

21 Q And beyond setting that initial meeting between Agent
22 Spivack, and Jack and also speaking with Jack on the phone,
23 did you take any further action with respect to this
24 investigation?

25 A I did. I was able to attend a meeting between Jack, and

Gergar - Direct - Demas

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1 Agent Spivack and another agent in the not-so-distant future
2 from that date at FBI headquarters.

3 Q Did you do any surveillance in connection with this case?

4 A The day of the arrest, I was out with the FBI Field Team,
5 a couple members from my unit and my sergeant, conducting
6 surveillance at the location.

7 Q Which location?

8 A I believe it was Bebars Baslan's residence in Brooklyn.

9 Q Were you present at all for the defendant's arrest on
10 March 19th, 2013?

11 A I was.

12 Q Where were you?

13 A I was at the hotel in New Jersey with agents of the FBI
14 prior to and during the arrest of Mr. Baslan and his
15 girlfriend.

16 Q Now, have you had any further involvement in this case
17 beyond March 19th, 2013?

18 A No, just updates.

19 MS. DEMAS: I have no further questions.

20 THE COURT: All right. Do you have any questions
21 for this gentleman?

22 MR. SAVITT: Yes, your Honor.

23 THE COURT: How long are you going to be? Never
24 mind.

25 We'll take a short break, folks, before we hear the

Gergar - Direct - Demas

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1 cross-examination. We had a late start, so we'll take a quick
2 break. Make sure everybody's comfortable. Do not discuss the
3 case. All rise.

4 (Outside the presence of the jury.)

5 THE COURT: Ten minutes, everybody.

6 (Proceedings continued on the following page.)

7

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PROCEEDINGS

66

1 (In open court; defendant present.)

2 (Jury not present.)

3 THE COURT: Any more information on the previous
4 witness?

-08:-
02:57

5 MR. SMITH: Judge, Detective Torres is here.

02:57

6 (Detective Torres present.)

02:58

7 THE COURT: Does he recognize -- did you recognize
8 a juror, sir?

02:58
02:58

9 DETECTIVE TORRES: Yes, sir.

02:58

10 THE COURT: From the neighborhood?

02:58

11 DETECTIVE TORRES: I lived on my block with my
12 parents, like, for 34 years. She was sitting in that chair
13 right there.

02:58
02:58
02:58

14 THE COURT: The second row, first chair?

02:58

15 DETECTIVE TORRES: Yes, if I remember.

02:58

16 THE COURT: Do you have -- other than recognize
17 her, did you have any relationship with her?

02:58
02:58

18 DETECTIVE TORRES: No, I had no relationship. I
19 never hanged out with her. She just lived on the same block
20 as me. We just say hi and that's it.

02:58
02:58
02:58

21 THE COURT: And you never had any discussions with
22 her?

02:58
02:58

23 DETECTIVE TORRES: No, I even kind of, like,
24 forgot her name, to be honest with you.

02:58
02:58

25 THE COURT: Okay. Appreciate it very much. Thank

02:58

GERGAR - CROSS/MR. SAVITT

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1 you.

02:58

2 MR. SMITH: Thank you.

02:58

3 (Witness excused.)

02:58

4 (Jury enters courtroom at 11:56 a.m.)

02:58

5 THE COURT: We'll get you all organized tomorrow.

02:59

6 It'll work a little more smoothly. Have a seat, everybody.

03:00

7 Mr. Savitt, your witness.

03:00

8 MR. SAVITT: Thank you, your Honor.

03:00

9 CROSS-EXAMINATION

02:47

10 BY MR. SAVITT:

02:47

11 Q It's still morning. So, good morning, Detective

02:47

12 Gergar.

03:00

13 A Good morning.

03:00

14 Q You told us about the beginning of your involvement in

03:00

15 this matter. That occurred on February the 6th, right, of

03:00

16 last year? Of 2013?

03:00

17 A Correct.

03:00

18 Q Okay. Part of that time you had no knowledge about any

03:00

19 of these events or alleged events. Am I correct?

03:00

20 A Correct.

03:00

21 Q And that was the day in which you -- did you meet

03:00

22 Mr. Jack personally or did you have a telephone

03:00

23 conversation?

03:00

24 A Telephone conversation.

03:00

25 Q Okay. And do you recall how long a telephone

03:01

GERGAR - CROSS/MR. SAVITT

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1 conversation it was, approximately?

03:01

2 A Between ten and 20 minutes.

03:01

3 Q And you, in your direct examination testimony, you

03:01

4 describe Jack at least the way he was speaking on the phone,

03:01

5 just correct me if I'm wrong, as emotional and -- am I

03:01

6 right?

03:01

7 A Yes.

03:01

8 Q And angry?

03:01

9 A Correct.

03:01

10 Q And amped up?

03:01

11 A Correct.

03:01

12 Q And when you say amped up, does that mean he's like on

03:01

13 a substance or something?

03:01

14 A No, I can't say that. He was excited.

03:01

15 Q Excited?

03:01

16 A Correct.

03:01

17 Q All right. Now, I take it that you and Detective

03:01

18 Torres did not discuss your testimony before you testified

03:01

19 here today. Am I correct?

03:01

20 A Correct.

03:01

21 Q You didn't talk to him about your testimony, to

03:01

22 Detective Torres. Correct?

03:01

23 A I did not talk to him about my testimony.

03:01

24 Q And Detective Torres didn't talk to you about his

03:01

25 testimony. Correct?

03:01

GERGAR - CROSS/MR. SAVITT

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1	A	Correct.	03:01
2	Q	And that's the proper thing to do, not to discuss	03:01
3		things with other witnesses.	03:02
4	A	Correct.	03:02
5	Q	So you each can testify independently of your own	03:02
6		recollections not what somebody told you?	03:02
7	A	Correct.	03:02
8	Q	Okay. Now, in your conversation with Jack, I would	03:02
9		imagine you didn't record it. Right?	03:02
10	A	No.	03:02
11	Q	All right. And did you expect his call that day on	03:02
12		February 6th of 2013?	03:02
13	A	I would have reached out to him.	03:02
14	Q	Okay. You reached out to him because of some	03:02
15		complaint. Am I correct?	03:02
16	A	Yes.	03:02
17	Q	And he answered the phone, you had a ten-minute	03:02
18		conversation with him. Am I right?	03:02
19	A	Correct.	03:02
20	Q	You asked him questions, he gave responses?	03:02
21	A	Yes.	03:02
22	Q	Did you ever meet Jack in person?	03:02
23	A	Yes.	03:02
24	Q	When was that?	03:02
25	A	May I look at my DD5s?	03:02

GERGAR - CROSS/MR. SAVITT

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1 Q Sure.

03:02

2 THE COURT: Yes, go ahead. Just tell us what
3 you're specifically looking at, what you're referring to.

03:02

03:02

4 A I met with Jack and Agent Spivack and his partner at
5 FBI headquarters. It would have been -- let's see, one
6 second. It would have been on February 26, 2013, at 1200
7 hours.

03:02

03:03

03:03

03:03

8 Q Okay. And you're looking at a document that's been
9 designated for identification, and correct me if I'm wrong,
10 3500-DG-1?

03:03

03:03

03:03

11 A I'm not sure how you guys have it documented. I just
12 have my report.

03:03

03:03

13 Q Oh, I see. And you have the original one. And it's --
14 is it a six-page report, so I know that we're looking at the
15 same thing while we talk?

03:03

03:03

03:03

16 A On the top of my report it would say, follow-up number
17 seven. It starts off, on February 26, 2013, at
18 approximately 1200 hours, I met with Jack, the complainant
19 and Special Agent Spivack at 26 Federal Plaza.

03:03

03:03

03:03

03:04

20 Q Now, you were involved in a conversation with Jack at
21 that point?

03:04

03:04

22 A In person, yes, on February 26th.

03:04

23 Q And Agent Spivack was there and another FBI agent. Am
24 I correct?

03:04

03:04

25 A Yes.

03:04

GERGAR - CROSS/MR. SAVITT

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1 Q Apart from the two FBI agents, yourself, and Jack, was
2 anybody else present?

3 A Not that I recall.

4 Q Okay. And the conversation concerned Jack's
5 complaints. Am I correct? In general.

6 A Yes.

7 Q And certain questions were asked of him and he gave
8 answers. Am I right?

9 A Yes.

10 Q Now, at that time how long a period of time were you in
11 contact -- well, what -- were you part of this conversation?

12 A On that date?

13 Q Yes, on the 26th?

14 A I can't say. At least -- I was there at least for half
15 hour, probably more; maybe an hour. I can't recall.

16 Q We'll go with your best recollection. Were you there
17 for the entire conversation, as far as you know, whenever it
18 was -- when Jack was there with FBI officers?

19 A On that date, yes.

20 Q How many times did you meet Jack in person?

21 A I would have met him on that date on February 26th and
22 I had seen him briefly on the date that Mr. Baslan was
23 arrested.

24 Q Okay. And Mr. Baslan was arrested on March the 19th,
25 sometime in the evening?

GERGAR - CROSS/MR. SAVITT

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1	A	I believe so, yes.	03:05
2	Q	And so was Kristen Henry, if you know?	03:05
3	A	Correct. Yes, March 19th, correct.	03:05
4	Q	And this was in New Jersey. Am I correct?	03:05
5	A	Yes.	03:05
6	Q	Okay. Now, when you first spoke to Jack on February	03:05
7		the 6th, did you ask him whether or not he had committed any	03:05
8		crimes?	03:05
9	A	I do not recall asking him anything to that effect.	03:05
10	Q	In the conversation that you were part of on the	03:05
11		26th of February, did the topic of whether or not he	03:06
12		committed any crimes come up at all?	03:06
13	A	I believe so but I can't recollect exactly what.	03:06
14	Q	All right. Would looking at your report, at your	03:06
15		notes, possibly refresh your recollection?	03:06
16	A	Yes, if I can.	03:06
17	Q	And I have it as page three of six, update by the FBI.	03:06
18	A	Yes, I do recall.	03:06
19	Q	And do you recall that there were potential charges	03:06
20		that Jack was concerned about?	03:06
21	A	Yes.	03:06
22	Q	And do you recall, with your memory refreshed by	03:06
23		looking at your report, what they were?	03:06
24	A	Yes.	03:06
25	Q	And what were they?	03:06

GERGAR - CROSS/MR. SAVITT

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1 A I wrote that Mister -- that Jack, excuse me, also
2 acknowledged that there might be videos of him having sex
3 with a 16 year-old-female on Mr. Baslan's computer and that
4 he understood he will possibly face charges also.

5 Q And do you know whether that was the first time that
6 Jack said anything about potential criminal exposure that he
7 would have?

8 A I believe he said stuff to the FBI agents when I wasn't
9 around.

10 Q All right.

11 MR. SAVITT: All right. No further questions.

12 Thank you.

13 THE COURT: Thank you, sir. Anything further?

14 MS. DEMAS: No, your Honor.

15 THE COURT: All right. Next witness.

16 (Witness excused.)

17 MR. SMITH: Government will call Special Agent
18 Aaron Spivack.

19 (Witness takes the stand.)
20

21 **AARON SPIVACK**, called by the Government, having been first
22 duly sworn, was examined and testified as follows:

23 THE CLERK: State your name for the record.

24 THE WITNESS: Aaron Spivack.

25 THE COURT: All right, go right ahead.

SPIVACK - DIRECT/MR. SMITH

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1 DIRECT EXAMINATION

02:47

2 BY MR. SMITH:

02:47

3 Q Good morning, Agent Spivack.

02:47

4 A Good morning, sir.

03:08

5 Q For the record, who do you work for?

03:08

6 A I work for the Federal Bureau of Investigation.

03:08

7 Q What's your title?

03:08

8 A I'm a special agent.

03:08

9 Q Do you work in a particular office?

03:08

10 A I do, sir.

03:08

11 Q What office?

03:08

12 A The New York field office.

03:08

13 Q And are you assigned a particular unit within the New
14 York field office?

03:08

03:08

15 A I am.

03:08

16 Q What unit is that?

03:08

17 A The Violent Crimes Against Children Squad.

03:08

18 Q How long have you been in the Violent Crimes Against
19 Children Squad?

03:08

03:08

20 A Since approximately 2010. Four years, approximately.

03:08

21 Q What types of crimes do you cover as a special agent
22 with Violent Crimes Against Children Squad?

03:08

03:08

23 A Our squad is chartered to investigate any and all
24 federal crimes involving sexual exploitation of children.

03:08

03:09

25 That would include child pornography, child prostitution,

03:09

SPIVACK - DIRECT/MR. SMITH

75

1 enticement cases, kidnapping, things of that sort.

03:09

2 Q How long have you been with the FBI, in total?

03:09

3 A February, I believe, was eight years.

03:09

4 Q What did you do before that?

03:09

5 A I was an intelligence analyst with the FBI.

03:09

6 Q And before that?

03:09

7 A I was a United States Marine.

03:09

8 Q You indicated that one of the things you did was

03:09

9 enticement cases. Did you ever do undercover cases?

03:09

10 A Yes, sir, I do.

03:09

11 Q Have you received any training for that?

03:09

12 A I have.

03:09

13 Q What type of training?

03:09

14 A Specifically regarding child exploitation matters,

03:09

15 there's training that I and other undercover agents attend,

03:09

16 which is a training in the workings of on line and recovery

03:09

17 investigations, various platforms that we use to target

03:09

18 individual predators on line, as well as classes on

03:09

19 vernaculars and different vocabulary used related to child

03:09

20 exploitation cases.

03:10

21 Q And have you become familiar with slang or vernacular

03:10

22 for sexual terms?

03:10

23 A Yes, sir, I have.

03:10

24 Q Agent Spivack, are you familiar with the investigation

03:10

25 of the defendant in this case, Bebar Baslan?

03:10

SPIVACK - DIRECT/MR. SMITH

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1 A Yes, I am.

03:10

2 Q What role, if any, did you have with respect to that
3 investigation?

03:10

03:10

4 A I was the case agent.

03:10

5 Q What does it mean to be the case agent of the
6 investigation?

03:10

03:10

7 A Case agents essentially means you're the lead
8 investigator in charge of the investigation.

03:10

03:10

9 Q When did you first become involved in this particular
10 investigation?

03:10

03:10

11 A I became involved on or about February 13th -- excuse
12 me, February 12th of 2013.

03:10

03:10

13 Q Can you describe for the jury how you first came -- how
14 the defendant first came to your attention?

03:10

03:10

15 A Yes, sir. On approximately February 12th of last year,
16 I received a phone call from a colleague of mine with the
17 New York Police Department, Detective Gergar. He had
18 information from a complainant that he thought I should
19 hear.

03:10

03:10

03:10

03:11

03:11

20 Q What, if any, action did you take after you spoke to
21 Detective Gergar in connection with this investigation?

03:11

03:11

22 A Very shortly thereafter that day, if not just an hour
23 later, even I reached out to Jack, the complainant, after
24 conferring with Detective Gergar, in that he and the NYPD
25 were okay with the FBI taking the lead, and I set up a

03:11

03:11

03:11

03:11

SPIVACK - DIRECT/MR. SMITH

77

1 meeting with Jack for the following day.

03:11

2 Q Did you ultimately meet with Jack on that day?

03:11

3 A On February 12th, no, sir, but on the 13th, the
4 following day I did.

03:11

03:11

5 Q Did you see Government Exhibit 45 when it was up?

03:11

6 A If that was the photograph?

03:11

7 Q The photograph.

03:11

8 A Yes, sir, I did.

03:11

9 Q Do you recognize the individual in that photograph?

03:11

10 A I do.

03:11

11 Q Who do you recognize that to be?

03:11

12 A That is Jack, the cooperator.

03:11

13 Q At this point when you met with Jack, did the FBI have
14 an ongoing investigation on him?

03:11

03:12

15 A No, sir, we did not.

03:12

16 Q When you met with him on February 13th, what was the
17 purpose of your interview?

03:12

03:12

18 A Purpose was several fold, I suppose. For any
19 complainant that comes to the FBI or the NYPD, we bring them
20 in. We first hear what they have to say, regarding the
21 alleged crime. And we try and determine the validity of the
22 crime, substantiate it in some capacity. We also try to
23 learn a little bit about the individual who is reporting the
24 crime.

03:12

03:12

03:12

03:12

03:12

03:12

03:12

25 Q Did Jack provide specific information to you on that

03:12

SPIVACK - DIRECT/MR. SMITH

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1 day?

03:12

2 A Yes, sir, he did.

03:12

3 Q Without going into the details of what he said, did he
4 provide information that he indicated was about a particular
5 person?

03:12

03:12

03:12

6 A Yes, he did.

03:12

7 Q Who was that person?

03:12

8 A That was the defendant, Bebar Baslan and Kristen Henry.

03:12

9 Q How did Jack physically appear to you during the course
10 of that interview on February 13, 2013?

03:12

03:12

11 A He appeared sober. He was visibly disturbed and
12 visibly upset.

03:12

03:12

13 Q Did you ask Jack detailed questions during the course
14 of your interview?

03:13

03:13

15 A Yes, I did.

03:13

16 Q Did he answer your questions?

03:13

17 A Yes, sir, he did.

03:13

18 Q Did you also ask questions about Jack's own criminal
19 history during the course of that meeting?

03:13

03:13

20 A Yes, I did.

03:13

21 Q Did he answer those questions?

03:13

22 A Yes, sir.

03:13

23 Q Why did you ask him about his own criminal history?

03:13

24 A Part of the vetting process, we understand that every
25 complainant who comes in our door, some of these

03:13

03:13

SPIVACK - DIRECT/MR. SMITH

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1 complainants have a criminal history, some of them have 03:13
2 various motivations or reasons for coming to the FBI. So 03:13
3 part of asking these questions is to determine who this 03:13
4 person was and what the information he was reporting was 03:13
5 about. 03:13

6 Q What, if anything, did Jack tell you when you asked him 03:13
7 about his own criminal history? 03:13

8 A He told me a number of things, to include that he had 03:13
9 had sexual contact with at least three minors, 16 and 03:13
10 17-year-old girls. 03:13

11 Q Did he indicate anything else? 03:13

12 A Yes, sir, he did. 03:13

13 Q What else? 03:13

14 A Drug use as well as a few instances in the past of some 03:13
15 violent activity and then some miscellaneous speeding and 03:14
16 traffic type violations. 03:14

17 Q Did you have any conversations with Jack during that 03:14
18 meeting about steps he'd be willing to take? 03:14

19 A Yes, sir, I did. 03:14

20 Q Can you describe those conversations? 03:14

21 A Initially I asked Jack about his willingness to record 03:14
22 phone calls, simply phone calls. He was willing, and he 03:14
23 also indicated that he would be willing to wear a wire, if 03:14
24 decided it was appropriate to have in-person contact. 03:14

25 Q Did you ultimately ask him to record phone calls? 03:14

SPIVACK - DIRECT/MR. SMITH

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1 A Yes, sir, I did.

03:14

2 Q Was that with one particular person or more than one
3 person?

03:14

03:14

4 A It was with the defendant, Bebar Baslan and potentially
5 Ms. Henry, if she was to hop on the line but with the
6 defendant's phone.

03:14

03:14

03:14

7 Q Is there a specific system that the FBI uses to record
8 telephone calls?

03:14

03:14

9 A Yes, sir, there is.

03:14

10 Q What's it called?

03:14

11 A I don't know the exact definition but it's called the
12 ITAC system.

03:14

03:15

13 Q During the course of your --

03:15

14 THE COURT: ITAC?

03:15

15 THE WITNESS: ITAC. Yes, sir, ITAC.

03:15

16 THE COURT: Okay.

03:15

17 THE WITNESS: Although, I don't recall what it
18 stands for.

03:15

03:15

19 Q During the course of your eight years with the FBI,
20 have you become familiar with the way that system operates?

03:15

03:15

21 A Yes, sir, I have.

03:15

22 Q Can you describe a little bit about how that system
23 works?

03:15

03:15

24 A Yes, sir, I'll trying to make it simple. The long
25 short end of it is how the system works is it is a system

03:15

03:15

SPIVACK - DIRECT/MR. SMITH

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1 designed to record phone calls that is monitored by the FBI,
2 controlled by the FBI. So user Jack in this case is
3 provided with an account, a unique pin, unique specifically
4 to him, something that only he would know. Jack is then
5 provided with an 888 -- I believe it's an 888 number, which
6 is our ITAC system.

7 Jack would call the ITAC system. He would then
8 enter in his account number, pin number, verifying who he
9 was. The system would then prompt Jack to enter what's
10 called a header. And a header is just simply a very short
11 preamble, stating who he was, the time, the date and the
12 purpose of the call.

13 At that point Jack -- the ITAC system would have
14 prompted Jack to enter in the target number, a number he
15 wishes to call. Once that is complete, the ITAC system
16 calls the target number and will automatically display, on
17 the caller ID, Jack's phone number, and the entire time this
18 is recorded.

19 Q Did you set up an account with the ITAC system for
20 purposes of this investigation?

21 A I did, yes, sir.

22 Q Did you provide Jack's information with that system?

23 A Yes, sir, I did.

24 Q Is that substantially the same, what you told us now?

25 A It is.

SPIVACK - DIRECT/MR. SMITH

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1 Q How do you actually retrieve calls that are made using
2 that system?

3 A Agents who are utilizing the ITAC system have their own
4 accounts, and I have mine. And what I were to do from our
5 FBI office in Manhattan, I would log into my account, select
6 the account created specifically for Jack and then I could
7 retrieve his phone calls in that manner.

8 Q Did you give Jack any other technical instructions
9 about what the system records and what it doesn't record?

10 A Yes, sir, I did.

11 Q What instructions did you give him?

12 A The way we have the ITAC system set up is it records
13 outbound calls, not inbound calls, at least the way that we
14 had it configured for this particular operation. And so I
15 instructed Jack that if the defendant were to call him, he
16 needed to know that that was not recorded. So he needed to
17 do what he could to get off the call, in a natural way,
18 nothing that was going to cause any suspicion, and then call
19 the defendant back utilizing the ITAC system so that it
20 could be recorded.

21 Q Where exactly are the calls maintained that are made
22 using the ITAC system.

23 A They're maintained at the FBI office at 26 Federal
24 Plaza in Manhattan New York.

25 Q In advance of this trial did you retrieve those calls?

SPIVACK - DIRECT/MR. SMITH

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1 A Yes, sir, I did.

03:17

2 Q Let me show you what's been marked as Government
3 Exhibit 1.

03:17

03:17

4 Do you recognize Government Exhibit 1?

03:18

5 A Yes, sir, I do.

03:18

6 Q What do you recognize it to be?

03:18

7 A This is the aforementioned ITAC calls. This is a CD of
8 all the calls that Jack made from February to March 2013.

03:18

03:18

9 Q Do the individual file names indicate when calls were
10 placed?

03:18

03:18

11 A They do.

03:18

12 MR. SMITH: The government offers Government
13 Exhibit 1.

03:18

03:18

14 THE COURT: Any objection?

03:18

15 MR. SAVITT: No, your Honor.

03:18

16 THE COURT: Received.

03:18

17 (Government Exhibit 1 admitted into evidence.)

18 Q Agent Spivack, does the person who makes the call using
19 the ITAC system have the ability to shut off the recording
20 during the course of that call?

03:18

03:18

03:18

21 A Not during the call, no, sir.

03:18

22 Q Did you test the system before you provided Jack with
23 user information and pin?

03:18

03:18

24 A Of course. I tested it a couple of times before we
25 gave it to Jack.

03:18

03:19

SPIVACK - DIRECT/MR. SMITH

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1 Q Was it operating properly?

03:19

2 A Yes, sir, it was.

03:19

3 Q Now, with respect to making the calls themselves, did
4 you give Jack any specific instructions?

03:19

03:19

5 A I did.

03:19

6 Q What instructions did you give him?

03:19

7 A Aside from the instructions, the instructions about it
8 recording outbound calls, I also instructed him to -- that
9 he could use any phone he needed to, it didn't have to be
10 limited to his cell phone, because the ITAC system will
11 display his phone number on it, which is what we tested in
12 our office.

03:19

03:19

03:19

03:19

03:19

03:19

13 Q Did you give him any instructions on which calls to the
14 defendant he should use the ITAC system for?

03:19

03:19

15 A Yes, sir, I did.

03:19

16 Q What instruction?

03:19

17 A I told Jack to record every outbound call, regardless
18 of the conversation.

03:19

03:19

19 Q Did you give him any instructions on -- on what to do
20 if criminal activity came up?

03:19

03:19

21 A Yes, sir, I did.

03:19

22 Q What instructions did you give him?

03:19

23 A With regards to the discussions over the phone or just
24 regarding any discussion in general, I instructed Jack that
25 it was okay for him to lie at our direction. That if he was

03:19

03:20

03:20

SPIVACK - DIRECT/MR. SMITH

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1 on a phone call with the defendant and conversations came
2 up, he was under our direction, free to engage the defendant
3 in any type of discussion, even if it would incriminate him,
4 and it was recorded that I instructed him that it was okay
5 to lie in this context.

03:20

03:20

03:20

03:20

03:20

6 Q Did you give -- on February 13th, did you give Jack any
7 instructions about the commission of crimes himself during
8 the course of the investigation?

03:20

03:20

03:20

9 A Yes, sir.

03:20

10 Q What did you tell him?

03:20

11 A At this point Jack was instructed he was not authorized
12 to engage in any elicit activity.

03:20

13 Q Did you make Jack any promises regarding his own
14 criminal conduct which he told you about?

03:20

03:20

15 A No promises at all were made.

03:20

16 Q Agent Spivack, was there a call recorded on the ITAC
17 system, on February 12, 2013?

03:20

03:21

18 A February 12th, sir?

03:21

19 Q I'm sorry, February 15th?

03:21

20 A February 15th there was a call.

03:21

21 Q And were there any calls connected prior to that call?

03:21

22 A None other than test calls.

03:21

23 Q During the course of the investigation, did you have an
24 opportunity to hear the defendant's voice?

03:21

03:21

25 A Yes, sir.

03:21

SPIVACK - DIRECT/MR. SMITH

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1 Q And just for clarity, have you met Mr. Baslan before
2 today?

3 A Yes, sir, I have.

4 Q Do you see him here in the courtroom?

5 A I do.

6 Q Can you identify where he's sitting and an item of
7 clothing that he's wearing?

8 A Yes, sir. He's sitting at the defense table with a tan
9 or beige suit.

10 THE COURT: Indicating Mr. Baslan.

11 Q Now, with respect to this call you were talking about
12 on February 15th, have you had an opportunity to listen to
13 that call?

14 A Yes, sir, I have.

15 Q Whose voices are on that call?

16 A The voices you can hear on the call are that of Jack
17 and the defendant, Mr. Baslan.

18 Q And was it -- was a transcription of this call made in
19 connection with this case?

20 A Yes, sir, there were transcriptions made.

21 Q Have you had an opportunity to review those?

22 A Yes, sir, I have.

23 Q And are they accurate?

24 A They are accurate.

25 Q Just to clarify, when you said that Jack was allowed to

SPIVACK - DIRECT/MR. SMITH

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1 lie during the course of your investigation, did you give 03:22
2 him any instructions on whether he could say he was 03:22
3 interested in sexual contact with children? 03:22

4 A I told Jack that he could indicate that he had a sexual 03:22
5 interest in children. I told Jack that he was not allowed 03:22
6 to steer the conversation to a direction that it was not 03:22
7 likely to go down but that he was allowed to agree and to go 03:22
8 along with that type of discussion. 03:22

9 Q Now, during the course of preparation, were 03:22
10 transcriptions made for each of the calls the government 03:22
11 intends to play today? 03:23

12 A Yes, sir. 03:23

13 Q And have you reviewed those? 03:23

14 A I have. 03:23

15 Q And are they accurate? 03:23

16 A Yes, sir, they are. 03:23

17 MR. SMITH: Your Honor, the government would offer 03:23
18 Exhibit 40 for as a demonstrative in the course of aiding 03:23
19 the jury. 03:23

20 THE COURT: Forty as an aid? 03:23

21 MR. SMITH: That's correct, your Honor. 03:23

22 THE COURT: Any objection, Mr. Savitt? 03:23

23 MR. SAVITT: No objection as an aid, and I would 03:23
24 ask the court to instruct the jury of what the purpose of 03:23
25 this is. 03:23

SPIVACK - DIRECT/MR. SMITH

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1 THE COURT: I take it Ms. Demas is about to 03:23
2 handout books to you with her assistants. First of all, 03:23
3 folks, only direct your attention to the exhibit that we are 03:23
4 discussing and that you're asked to refer to. I'm waiting 03:23
5 until this is done because what I have to say is very 03:23
6 important. When you have the book, look up at me and I'll 03:23
7 know that we're all on the same page and I can give you the 03:24
8 appropriate instructions. 03:24

9 Everybody have a transcript book? Apparently not. 03:24
10 Now, does everybody have one? 03:24

11 THE JUROR: Yes. 03:24

12 THE COURT: All right. These transcripts, ladies 03:24
13 and gentlemen, are not evidence. They're given to you as an 03:24
14 aid in listening to various taped conversations. The 03:24
15 evidence is what you hear. And obviously the transcript is 03:24
16 somebody else's rendition of what that person heard. 03:24

17 Now, it may be entirely consistent with what you 03:24
18 hear, but if there is any discrepancy between what you hear 03:24
19 and what appears on the transcript, it's what you hear that 03:24
20 is the evidence in the case. Okay? And I don't mean by 03:24
21 giving you this instruction to suggest to you that you're 03:24
22 going to find a lot of errors -- who knows. It's just very 03:24
23 important that you understand that the evidence consists of 03:24
24 taped recordings and not the transcript. 03:25

25 MR. SMITH: Your Honor, before I play this call, 03:25

SPIVACK - DIRECT/MR. SMITH

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1 we also have setup headphones, to make it a little easier 03:25
2 for people to hear the call, which we would like to handout. 03:25

3 THE COURT: Okay. They are wireless? 03:25

4 MR. SMITH: They are. 03:25

5 THE COURT: Good luck. We sometimes have success 03:25
6 with these wireless, sometimes we don't. If your headphone 03:25
7 is not working, by all means let us know immediately. You 03:25
8 know, what I'm going to suggest is when everybody is 03:26
9 ready -- take them off. I don't want anybody's eardrums to 03:26
10 be blown out. We got to figure out a way to do this a 03:26
11 little bit more efficiently. 03:26

12 Does everybody have a headset? Now everybody has 03:26
13 a headset. Right? Leave them off. We're going to start 03:26
14 the tape, and once the tape is started, I'll ask you to take 03:26
15 them -- move them slowly to your ears. You'll see there's a 03:26
16 volume gizmo on here. I just don't want to hurt anybody. 03:27

17 When everybody is hearing, the headsets are 03:27
18 working, we'll stop, rewind and start again. 03:27

19 You want to start the tape? 03:27

20 MR. SMITH: Yes. 03:27

21 (Audio played.) 03:27

22 THE COURT: Okay, can you cut that. 03:27

23 Is everybody able to hear? 03:27

24 THE JUROR: Yes. 03:28

25 THE COURT: All right. If you will rewind. You 03:28

SPIVACK - DIRECT/MR. SMITH

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1 want the lights dimmed?

03:28

2 MR. SMITH: I'm sorry, I just -- can we turn up
3 the actual courtroom volume a little bit.

03:28

03:28

4 (Audio played.)

03:28

5 MR. SMITH: Thank you. I'll start this at the
6 beginning now. For the record, this is the
7 February 15th call at 7:30 p.m.

03:28

03:28

8 (Audio played.)

03:28

9 Q Can you just identify whose voice we heard?

03:28

10 A The person who just said the scariest dream ever, that
11 was Jack.

03:29

03:29

12 (Audio played.)

03:29

13 Q Can you identify who said, "Well, what kind of scary
14 dream, man"?

03:29

03:29

15 A That was the defendant.

03:29

16 (Audio played.)

03:29

17 Q Agent Spivack, after the call on February 15th, were
18 there other calls recorded by the ITAC system by Jack?

03:29

03:32

19 A There were, yes, sir.

03:32

20 Q And were there several calls recorded on February 24,
21 2013?

03:32

03:32

22 A Yes, sir, there were.

03:32

23 Q We'll discuss the next set of calls that we're on.

03:32

24 Were you having any conversations?

03:33

25 A Yes, sir, I believe so. If I may get one of the

03:33

SPIVACK - DIRECT/MR. SMITH

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1 binders. It might help me as well. Thank you.

03:33

2 Q Did that help you?

03:33

3 A Yes, sir, it did. Thank you.

03:33

4 Q And were there other calls recorded between

03:33

5 February 15th and February 24th?

03:33

6 A Yes, sir, there were.

03:33

7 Q Will the system record a call even if it goes directly
8 to voice mail?

03:33

03:33

9 A Yes, sir, it does.

03:33

10 Q Were there any calls where there was actually a
11 conversation?

03:33

03:33

12 A Not until the 24th.

03:33

13 Q Have you listened to that call as well -- first of all,
14 on the 24th at 6:30?

03:33

03:33

15 A Yes, sir, I have.

03:33

16 Q Whose voice is on that call?

03:33

17 A The voices on that call are also that of Jack and the
18 defendant's.

03:33

03:34

19 Q I'm going to play the call. I'm sorry. I'm going to
20 play the call from February 24th at 6:30 p.m., and it's
21 tabbed in the binders.

03:34

03:34

03:34

22 (Audio played.)

03:34

23 Q Agent Spivack, based on your experience, do you
24 understand what the word "blow" means?

03:34

03:43

25 A Yes, I do.

03:43

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1	Q	What's your understanding?	03:43
2	A	Blow in this context refers to oral sex.	03:43
3	Q	Now, on the call an individual named Ellie came up.	03:43
4		Did that person come up in your investigation?	03:43
5	A	Yes, sir, he did.	03:43
6	Q	Who is that person?	03:43
7	A	He is the child, one of the young sons to Jack.	03:43
8	Q	Approximately how old is he?	03:43
9	A	Now Ellie is, I believe, one and a half. At the time I	03:43
10		believe he was three -- or I may have that reversed. He was	03:43
11		between three months and one and a half. There's two kids.	03:43
12		I can't off the top of my head recall which one was then	03:43
13		three months and which is then a year and a half.	03:43
14	Q	As part of your job, have you also -- do you have an	03:43
15		understanding of what the term "suck off" means?	03:43
16	A	Yes, I do.	03:43
17	Q	What is your understanding?	03:43
18	A	Suck off is also another reference to oral sex.	03:44
19	Q	Agent Spivack, was there another call on	03:44
20		February 24th recorded by the ITAC system?	03:44
21	A	Yes, sir, there was.	03:44
22	Q	And was that at approximately 6:40 p.m.?	03:44
23	A	That's correct. Yes, sir.	03:44
24	Q	Whose voices are on that call?	03:44
25	A	Voices on that call are Jack and the defendant,	03:44

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1 Mr. Baslan.

03:44

2 MR. SMITH: Your Honor, I'll now play the call at
3 6:40p. M. On February 24th, which is in the transcript
4 binder.

03:44

03:44

03:44

5 THE COURT: All right, go ahead.

03:44

6 (Audio played.)

03:50

7 Q Agent Spivack, earlier in that tape the defendant used
8 the term "get off." Do you have an understanding of what
9 that means, based on your experience?

03:50

03:50

03:50

10 A Yes, sir, I do.

03:50

11 Q What's your understanding?

03:50

12 A "Get off" means to orgasm or ejaculate.

03:50

13 Q Now, after that call on February 24th at 6:40 p.m., was
14 there another call captured by the ITAC system on that day?

03:50

03:50

15 A Yes, sir, there was.

03:50

16 Q And was that call approximately 6:55?

03:50

17 A Approximately.

03:50

18 Q I'd like to play a call from Government Exhibit 1 from
19 February 24th at 6:55 p.m.

03:50

03:50

20 (Audio played.)

03:50

21 Q And Agent Spivack, whose voices are captured on this
22 call?

03:50

03:51

23 A This call is Jack and also the defendant, Mr. Baslan.

03:51

24 (Audio played.)

03:51

25 Q Agent Spivack, if I can just stop for a moment. Did

03:51

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1 the name Steven come up during your investigation?

04:01

2 A Yes, it did.

04:01

3 Q Who is Steven?

04:01

4 A Steven is the younger brother to Jack.

04:01

5 Q Did Steven have any kids?

04:01

6 A Yes, he does.

04:01

7 Q Have you met any of his kids?

04:01

8 A I have.

04:01

9 Q And what was the first name of the child you met?

04:01

10 A One child in particular was named Leah.

04:02

11 Q And approximately how old was Leah in February/March,
12 2013?

04:02

04:02

13 A I met her, she was eight. I met her recently. Last
14 year she was seven, in March 2013.

04:02

04:02

15 MR. SMITH: Let's start back up right there.

04:02

16 (Audio played.)

04:02

17 THE COURT: We're going to break now for lunch.

04:02

18 Don't discuss the case, ladies and gentlemen. We
19 will resume at 2:10. Have a pleasant lunch. All rise.

04:06

04:06

20 (Jury exits courtroom at 1:05 p.m.)

04:06

21 THE COURT: All right, 210, folks.

04:07

22 (Luncheon recess.)

04:07

23 (Continued on the next page.)

24

25

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1

2

A F T E R N O O N S E S S I O N

3

4

2:18 p.m.

5

(In open court; defendant present.)

6

(Jury not present.)

7

THE COURT: We're waiting for two or three tardy jurors. You know, I can conduct a trial for nine weeks and not have a single day where any juror is late. Then I get another jury, and let's hope -- let's hope this is not symptomatic of a bigger problem. Maybe they're caught on the other side of that thunderstorm. But that's where we are. We're waiting.

-08:-

05:22

05:22

05:22

05:22

05:22

05:22

14

(Brief pause in the proceedings.)

05:22

15

THE CLERK: All rise.

05:22

16

(Jury enters courtroom at 2:22 p.m.)

05:25

17

THE COURT: All right, please be seated.

05:25

18

Mr. Smith, go, ahead.

05:25

19

BY MR. SMITH

05:26

20

Q Agent Spivack, when we left off we just listened to a recorded call from February 24, 2013. Was there -- were there subsequent calls the next day?

05:26

05:26

05:26

23

A The next day, sir?

05:26

24

Q Yes.

05:26

25

A I don't believe there were the next day, no, sir.

05:26

SPIVACK - DIRECT/MR. SMITH

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1 There's a chart, I know. If you have it, it would
2 definitely refresh my memory.

3 MR. SMITH: I'm going to hand up what has been
4 marked as Government Exhibit 3500-AS-48 and -49.

5 Q Does that refresh your recollection, Agent Spivack?

6 A Yes, it does.

7 Q Was there a call on the next day?

8 A There was. On the 25th of February it was a phone
9 call.

10 Q Was that a substantive call related to the plan that
11 they had been discussing on the 24th?

12 A No, sir, it was not.

13 Q Now, following the call on the 25th, did you meet with
14 Jack again?

15 A Yes, sir, I did.

16 Q When was that?

17 A That was on February 26th, 2013.

18 Q What was the purpose of that meeting?

19 A Purpose of the meeting on the 26th was to bring Jack in
20 and officially admonish him and sign him up as a cooperator,
21 as an official cooperator for the FBI.

22 Q What does it mean for someone to be an official
23 cooperator for the FBI?

24 A It means that they're working in an official capacity
25 for us, to obtain evidence and things of that sort, and

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1 they're doing so at our direction. And it happens -- it
2 occurs after some kind of allegation they've made that has
3 been substantiated in some capacity.

4 Q Was he working in your direction before the 26th?

5 A Yes, he was.

6 Q You said that you admonished him. Can you describe
7 what you mean?

8 A Yes, sir. An admonishment, sir, are basically the dos
9 and don'ts of working as a cooperator. There's a list of
10 things that we read to the cooperator. There's some things
11 that cooperators can do at our direction that they would not
12 be able to do otherwise. It's basically just a set of rules
13 and guidelines.

14 Q What are the things that you told him he could now do?

15 A Jack was given authority by us by the FBI to commit a
16 couple of acts of elicit activity. Specifically, Jack was
17 given permission, authorization, to receive and possess
18 child pornography, as well as receive and possess narcotics.

19 Q One of the things -- what are the things he couldn't
20 do?

21 A Jack was told he couldn't do really anything else. He
22 couldn't use narcotics. He couldn't distribute narcotics.
23 He couldn't engage in any form of sexual exploitation beyond
24 possession and receipt of child pornography. So Jack was
25 not allowed to distribute child pornography or engage in any

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1 other behavior, other than the admonishments to him.

05:29

2 Q Did you give had instructions on what to do if he saw
3 actual minors in one of these situations?

05:29

05:29

4 A Yes, sir, I did.

05:29

5 Q What instructions did you give?

05:29

6 A I instructed Jack that if he were to encounter a
7 situation, whether it was over the phone and he learned of
8 this situation or whether it was in person, where if he
9 learned that there was a child present, he was to contact me
10 immediately. In the case of our ops, where we ran him as a
11 cooperator wearing a wire, aside from the ability to call
12 me, we also had code words that I was able to hear in
13 realtime.

05:29

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05:29

14 So if I knew a child was present, we would be able
15 to take a different course of action.

05:29

05:30

16 Q Special Agent Spivack, you indicated a minute ago that
17 one of the things you told him he was authorized to do was
18 receive and see child pornography. Was that at the
19 direction of a particular person?

05:30

05:30

05:30

05:30

20 A Yes, it was.

05:30

21 Q Who was that?

05:30

22 A It was actually a person. It was related to the
23 defendant, Bebars Baslan and Kristen Henry.

05:30

05:30

24 Q Was it a general license for him to have child
25 pornography?

05:30

05:30

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1 A No, sir, it was not. It was specific to these two
2 individuals.

3 Q Up to this point of this meeting on February 16, 2013,
4 had Jack done anything on behalf of the FBI, other than
5 making recorded telephone calls that we talked about?

6 A No, sir.

7 Q Did you discuss other steps at this meeting?

8 A Yes, I did.

9 Q What other steps did you discuss?

10 A I discussed with Jack taking it a step further and
11 meeting Mr. Baslan and Ms. Henry in person and wearing a
12 recording device, carrying a recording device at the time he
13 would meet with these people.

14 Q Did you give him any instruction about setting up a
15 meeting?

16 A Yes, I did.

17 Q What instruction did you give him?

18 A I told Jack that when appropriate, when it was natural
19 for he and the defendant, that he should set up a meeting
20 any time, day or night, and that we would be there to
21 monitor the meeting.

22 Q At this February 26th meeting you had with Jack, did
23 you ask him any more questions about his criminal history?

24 A Yes, sir, I did.

25 Q What did you ask him?

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1 A Basically went back over a lot of the activity that he
2 told me in our first meeting. During our first meeting, a
3 lot of information that he told me regarding his past, and I
4 wanted to go over some things in a little bit greater
5 detail.

6 Q Did he provide you with any additional information?

7 A Yes, sir, he did.

8 Q What did he tell you?

9 A He regarded -- excuse me, it regarded specific
10 information regarding encounters with three minor females he
11 had had in the past, 16 year olds and 17 year olds.

12 Specific information as to who they were, where they were
13 from, the context behind meeting them, et cetera.

14 Q During the course of this meeting, you assigned him as
15 a cooperator, did you make him any promises regarding that
16 prior criminal conduct?

17 A No, sir, I did not.

18 Q Did you ever talk to him about a potential resolution
19 for those crimes?

20 A Not so much. I informed Jack that what he was telling
21 me I took to be very serious, and that I could not guarantee
22 anything one way or another, nor could I promise anything.

23 Q Was he assigned an operational name?

24 A Yes, sir, he was.

25 Q What was the name that he was assigned?

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1 A I gave him the name Fragilistic.

05:32

2 Q Any particular reason?

05:32

3 A Yes, sir. He and the defendant used this as a code
4 word on the phone to indicate all clear, essentially. So
5 that was the name that I adopted for him as his code word.

05:32

05:32

05:32

6 Q After this meeting you had on February 26th, did Jack
7 ultimately set up a meeting with the defendant?

05:32

05:32

8 A Yes, he did.

05:32

9 Q Were there recorded phone calls on which that meeting
10 was set up?

05:32

05:33

11 A Yes, sir.

05:33

12 Q Do you recall what dates those phone calls occurred?

05:33

13 A Yes, sir. I believe it was on the 6th of March, 2013.
14 According to the chart, 6:36 p.m.

05:33

05:33

15 Q And with respect to those phone calls, was there any
16 discussion of the plan, other than to set up this meeting?

05:33

05:33

17 A No, sir. It was simply regarding the meeting.

05:33

18 Q When was the meeting set for?

05:33

19 A It was set for the next day, which was March 7, 2013.

05:33

20 Q What, if anything, did you do before that meeting?

05:33

21 A Myself, my partner, my two partners, met Jack in a
22 parking lot near the defendant's residence. We then
23 provided Jack with three recording devices and a
24 fourth device that allows us to monitor realtime. The
25 fourth device did not record actively, it was just a

05:33

05:33

05:33

05:33

05:33

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1 realtime device.

05:34

2 He was given these devices after a brief
3 discussion about what we were looking for him to do and some
4 safety concerns and some code words that we devised in the
5 event that he was in danger or there was a child present.

05:34

05:34

05:34

05:34

6 Q You said three recording devices and one device that
7 transmitted realtime, were these audio recording devices
8 video or both?

05:34

05:34

05:34

9 A Two of the three devices were audio only, the third
10 device was audio and video.

05:34

05:34

11 Q And who activated the devices?

05:34

12 A Myself, my partner, special agent John Robertson.

05:34

13 Q Why did you do that?

05:34

14 A We had control of the devices. The way to turn the
15 devices on and off is something that we control, where the
16 switch is located on the device. It is not necessarily that
17 obvious to the naked eye. So it's something we maintain
18 control over.

05:34

05:34

05:34

05:34

05:34

19 Q Is there a way to determine, after you get the device
20 back, if it's been turned off and back on?

05:34

05:35

21 A Yes, there is.

05:35

22 Q How do you tell?

05:35

23 A Specific to audio recording. It will record an entire
24 session length. If the audio device is turned off in the
25 middle of it, it will stop. And if it is turned back on, it

05:35

05:35

05:35

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1 will create a completely separate session number, session
2 ID.

3 Q You indicated that you gave him some specific
4 instructions with respect to this meeting on March 7th?

5 A I did.

6 Q Can you describe what those instructions were?

7 A Yes, sir. Jack was essentially told he was going to
8 want him to go into the residence, the defendant's residence
9 and Ms. Henry's and just have discussions similar to that of
10 what he had on the phone, previous conversations we had been
11 listening to. Throughout the theme, I kind of themed to
12 Jack throughout the entire evolution of this, I wanted to
13 know specifically what Mr. Baslan was planning to do, who
14 these children were, anything about child pornography, where
15 he was getting where, where he was maintaining it, things
16 like that. Pretty much anything and everything there was to
17 know about this and other potential crimes.

18 Q Did you give him anything else?

19 A I did, yes, sir.

20 Q What else did you give him?

21 A I gave Jack a thumb drive, I believe it was a SanDisk
22 brand thumb drive.

23 Q Why did you do that?

24 A Based on previous discussions that we had heard between
25 Jack and the defendant, we knew that the defendant had

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1 possessed child pornography. I gave Jack a thumb drive that 05:36
2 I had cleaned and wiped myself. It was a forensically sound 05:36
3 thumb drive. I knew nothing had been on it. I provided that 05:36
4 to Jack in the event child pornography had come up. I think 05:36
5 it was the last conversation he had on the phone, last
6 substantive conversation, the defendant agreed to provide 05:36
7 child pornography. I wanted Jack to agree if the defendant 05:36
8 was willing. 05:36

9 Q Now, after you gave him these devices and you turned 05:36
10 them on, what happens? 05:36

11 A Immediately after they were turned on I read what's 05:37
12 called preamble which is basically it's me stating who we 05:37
13 were, where we were, and what we were doing. Then at that 05:37
14 point I let Jack go. He got in his car and he drove the 05:37
15 maybe ten minutes to the defendant's residence. 05:37

16 Q What happened after he got to the defendant's 05:37
17 residence? 05:37

18 A Myself, Agent Robertson, another agent were in a car 05:37
19 parked in such a manner we could see the residence and hear 05:37
20 what was going on, and we observed Jack enter the residence, 05:37
21 and we sat outside and we listened till approximately an 05:37
22 hour, hour and a half, maybe, until the meeting was over. 05:37

23 Q What was the address that you went to? 05:37

24 A It was 1153 Ocean Parkway in Brooklyn, New York. 05:37

25 Q After -- after the meeting was over what happened? 05:37

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1 A After the meeting was over we watched Jack. We 05:37
2 observed Jack leave the residence and enter his vehicle. We 05:37
3 then followed him back to the very same -- we call it the 05:37
4 staging area, very same staging area where we met Jack 05:38
5 before the meeting, at which point I retrieved the devices 05:38
6 from him. We gave what's called a post-amble. Same thing 05:38
7 we did before, just at the end of the meeting and then I 05:38
8 turned the devices off. 05:38

9 Q Did you ultimately download those devices? 05:38

10 A Yes, sir, I did. 05:38

11 Q And could you tell whether or not they had been turned 05:38
12 off during the course of this meeting? 05:38

13 A I was able to tell. 05:38

14 Q Had they been turned off? 05:38

15 A No, sir, they were not turned off. 05:38

16 Q Let me show you what's been marked as Government 05:38
17 Exhibit 2 for identification. 05:38

18 Do you recognize Government Exhibit 2? 05:38

19 A Yes, I do. 05:38

20 Q What do you recognize it to be? 05:38

21 A This is a CD containing the audio and video files taken 05:38
22 from the cooperator Jack on February 7th, 2013. 05:38

23 Q How do you know it's that CD? 05:38

24 A My handwriting. My initials are right next to the 05:38
25 label. 05:39

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1 THE COURT: The date was March 7th?

05:39

2 THE WITNESS: Yes, sir, March 7th.

05:39

3 MR. SMITH: The Government would offer Government
4 Exhibit 2.

05:39

05:39

5 MR. SAVITT: No objection.

05:39

6 THE COURT: March 7th, received in evidence,
7 Government Exhibit 2.

05:39

05:39

8 (Government Exhibit 2 was admitted into evidence.)

05:39

9 Q Now, with respect to these audio and video recordings,
10 would some of -- was the audio better on some of them than
11 others?

05:39

05:39

05:39

12 A Yes.

05:39

13 Q Did you do anything to facilitate presentation at
14 trial?

05:39

05:39

15 A We did. Yes, sir.

05:39

16 Q What did you do?

05:39

17 A What we did is we took -- one of the audio devices,
18 audio one, the audio is quite clear. The audio on the
19 video, while the video is clear the audio is -- is a little
20 bit muffled. So we overlaid portions of audio one -- excuse
21 me. We overlaid the entire set of audio one on to the
22 video. So you can hear audio one and see the video.

05:39

05:39

05:39

05:39

05:39

05:39

23 Q Did you make any changes to the audio?

05:39

24 A Not at all.

05:39

25 Q Did you make any changes to the video?

05:40

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1 A Not at all.

05:40

2 MR. SMITH: The government would ask to show that
3 combination video, just so it facilitates.

05:40

4 THE COURT: Okay. Is there a transcript?

05:40

5 MR. SMITH: Yes, there is, your Honor.

05:40

6 THE COURT: Is it one in the book, the March 7th?

05:40

7 MR. SMITH: That's right, your Honor, March 7th at
8 5:30.

05:40

9 THE COURT: If you'll turn to that in your book,
10 ladies and gentlemen. Bear in mind my admonitions before
11 about the limited purpose of these transcripts.

05:40

12 MR. SMITH: All right. I just have the entire
13 video. So I'll probably try to skip a couple of portions,
14 your Honor, during the course of the presentation.

05:40

15 THE COURT: Just direct your attention accordingly
16 to the appropriate references on the transcript.

05:41

17 Q Let me start this at the beginning.

05:41

18 (Audio played.)

05:41

19 MR. SMITH: Judge, I neglected to mention that
20 during the break we shut off the audio devices. There is an
21 on and off switch at the bottom, the volume switch if. You
22 move the volume up two to three.

05:41

23 Q I'm going to jump forward to 1026, approximately.

05:42

24 Agent, can you just summarize what happened in that
25 intervening time?

05:42

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1 A Yes, sir. The last ten minutes or so, approximately,
2 is the cooperator driving to the target residence and this
3 should correspond to the next portion.

4 MR. SMITH: We're on page three.

5 (Audio played.)

6 Q Can you just summarize what happened in the next minute
7 or so.

8 A Yes, sir. The cooperator used the restroom.

9 (Audio played.)

10 MR. SMITH: Let me jump forward to
11 approximately --

12 THE COURT: I can't hear you.

13 MR. SMITH: I'm going to jump forward to
14 approximately 2511.

15 THE COURT: You're making references that don't
16 correspond to anything we have in front of us.

17 MR. SMITH: I'm sorry. It corresponds to the time
18 code of the video that should be in front of the jury.

19 THE COURT: Well, if they have the video, I beg
20 your pardon.

21 (Pause.)

22 THE COURT: What's happening?

23 MR. SMITH: Oh, I'm sorry, your Honor. I was
24 waiting for you. I'll start back up.

25 THE COURT: Okay.

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1 (Audio played.)

05:46

2 MR. SMITH: Now I'm just having technical
3 difficulty.

05:46

05:48

4 This is going to skip forward one minute.

06:01

5 Q Agent Spivack, what are we skipping?

06:01

6 A Jack is using the restroom.

06:01

7 (Audio played.)

06:01

8 Q Agent Spivack, before we go on, the camera clearly
9 jumps around during the course of that video. Can the
10 person using the video recording device see exactly what's
11 captured?

06:01

06:25

06:25

06:25

12 A No, sir, you cannot.

06:25

13 Q And did you give Jack any particular instructions about
14 what to do with that video recording device when he's
15 leaving the room?

06:25

06:25

06:25

16 A Yes, I did.

06:25

17 Q What instructions did you give him?

06:25

18 A I told Jack that if he was leaving the room for any
19 reason to go to the bathroom -- for example, I told him to
20 put the recording device in his pocket and take it with him.
21 Do not leave it alone with the defendant or Ms. Henry.

06:25

06:25

06:25

22 Q Why did you do that?

06:26

23 A Due to our technologies, the device is hidden in a
24 particular object, and we didn't want the defendant or
25 Ms. Henry looking at the object a little closer and figuring

06:26

06:26

06:26

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1 out it was actually a hidden camera.

06:26

2 Q Now, Agent Spivack, before we go on, can you just
3 summarize what the next few minutes of the video consists
4 of?

06:26

06:26

06:26

5 A Yes, sir. Approximately the next ten minutes the
6 camera, the object was placed in front of the TV, they're
7 watching, and ten minutes, approximately ten minutes of
8 visual depiction of child pornography is present.

06:26

06:26

06:26

06:26

9 Q In advance of this trial, did you take screen shots of
10 portions of that -- of the recording device video from
11 March 7th?

06:26

06:26

06:26

12 A Yes, sir, I did.

06:26

13 Q Let me show you what's been marked as Government
14 Exhibit 46A to 46G?

06:26

06:26

15 THE COURT: A to... I'm sorry?

06:26

16 MR. SMITH: A to G.

06:27

17 THE COURT: A to G.

06:27

18 Q Do you recognize those?

06:27

19 A Yes, sir, I do.

06:27

20 Q What do you recognize them to be?

06:27

21 A These are the screen shots of the child pornography
22 that I took.

06:27

06:27

23 MR. SMITH: Government offers 46A through 46G.

06:27

24 THE COURT: Any objection?

06:27

25 MR. SAVITT: Subject to your Honor's ruling, no,

06:27

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111

1 not at this time.

06:27

2 THE COURT: All right, 46A to 46G admitted.

06:27

3 (Government Exhibits 46A through 46G admitted into
4 evidence.)

06:27

5 THE COURT: Would you be good enough to tell us
6 what specifically you mean by a screen shot?

06:27

06:28

7 THE WITNESS: Yes, sir. So what I've done is, as
8 the video is displaying the child pornography, I paused the
9 video, I literally did it, it's a print screen function on
10 the computer, which just takes an image of essentially what
11 you see on the commuter, and that is what was on those
12 slides in front of me.

06:28

06:28

06:28

06:28

06:28

06:28

13 MR. SMITH: Can you -- I'm just asking that the
14 overhead just be set, just so the witness can see it at the
15 moment.

06:28

06:28

06:28

16 Q Can you see that, Agent Spivack?

06:28

17 A I can, yes, sir.

06:28

18 Q This is 46A. Can you just describe what's on the
19 screen in the image?

06:28

06:28

20 A Yes, sir. This is a video. And this particular screen
21 shot is just the face of what is a prepubescent female who
22 is engaged in oral sex with a male.

06:28

06:28

06:29

23 MR. SMITH: The government intends to publish this
24 image for five seconds, your Honor.

06:29

06:29

25 THE COURT: Go ahead.

06:29

SPIVACK - DIRECT/MR. SMITH

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1 Are they visible? Is the image visible? Not on
2 my screen. Do you see it, Mike?

3 THE CLERK: Yes.

4 THE COURT: Ladies and gentlemen of the jury, can
5 you see that image? Okay, thank you.

6 MR. SMITH: It's not on there any more.

7 THE COURT: Okay, just for five seconds. The
8 government will put it up for five seconds.

9 MR. SMITH: Can you put it back so that the
10 witness can see the next image.

11 I have another one.

12 Q And Agent Spivack, just with respect to 46A, did you
13 note what time this occurred?

14 A Yes, sir, I did.

15 Q And what time is that?

16 A It was approximately 68 minutes and six seconds into
17 the video.

18 Q I'm going to put up Government Exhibit 46B for the
19 witness only. Can you see that, Agent Spivack?

20 A Yes, sir, I can.

21 Q And can you describe what this depicts?

22 A Yes, sir. This is another prepubescent girl, under the
23 age of ten, I believe. She is engaged in sexually explicit
24 conduct with an adult male.

25 Q And did you know what time this occurred?

SPIVACK - DIRECT/MR. SMITH

113

1 A Yes, sir.

06:30

2 Q The recording?

06:30

3 A Yes, sir. It was at 71 minutes, 50 seconds.

06:30

4 MR. SMITH: If we can put that up for the jury for
5 five seconds.

06:30

6 Put it back for the witness.

06:30

7 Q Agent Spivack, I'm putting up Government Exhibit 46C.

06:31

8 Do you see that?

06:31

9 A Yes, sir, I do.

06:31

10 Q Can you describe what it depicts?

06:31

11 A Yes, sir. It's the same victim identified in the
12 previous slide, approximately two seconds later, 71 minutes,
13 52 seconds.

06:31

06:31

06:31

14 MR. SMITH: I'll put this up for the jury for
15 approximately five seconds.

06:31

06:31

16 (Exhibit published.)

17 MR. SMITH: Put it back for the witness. Putting
18 up for the witness Government Exhibit 46D.

06:31

06:31

19 Q Agent Spivack, can you describe what this image
20 depicts?

06:31

06:31

21 A Yes, sir. These are two prepubescent girls. They are
22 performing oral sex on what is described in the video as
23 cucumbers.

06:31

06:31

06:32

24 Q Approximately what time of the video did this occur?

06:32

25 A Seventy-six minutes and 20 seconds.

06:32

SPIVACK - DIRECT/MR. SMITH

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1 Q And just for clarity, when you're describing these, did
2 you actually watch this entire recording?

3 A I have, yes, sir.

4 MR. SMITH: I will publish to the jury, publish
5 for five seconds.

6 (Exhibit published.)

7 Q I show the witness Government Exhibit 46E. Can you see
8 that?

9 A Yes, sir, I can.

10 Q And what does that depict?

11 A It depicts three young children, the two are most
12 certainly females, the third may actually be a very young
13 male. It's very hard to see in the video. They're all are
14 prepubescent and they're displaying genitals.

15 Q And what time is this occurring?

16 A This is approximately 77 minutes and 20 seconds.

17 (Exhibit published.)

18 MR. SMITH: Let the record reflect that I
19 published that to the jury for approximately five seconds.

20 Put it up for the witness again.

21 Q Agent Spivack, can you see that?

22 A No, sir, I cannot.

23 THE COURT: All right. It seems like a good time
24 to take a break, folks, while we tinker with the machinery
25 here. Step inside. Don't discuss the case.

SPIVACK - DIRECT/MR. SMITH

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1 We'll resume in about 12 minutes.

06:34

2 THE CLERK: All rise.

06:34

3 (Jury exits courtroom at 3:31 p.m.)

06:34

4 THE COURT: All right, ten minutes.

06:35

5 (Recess.)

06:35

6 (In open court; defendant present.)

7 (Jury not present.)

06:35

8 THE COURT: All right, before we resume, I thought

06:35

9 I would alert the jury to the fact that one of the witnesses

06:44

10 has mentioned to us he may have recognized a juror. And if

06:44

11 there's anybody in the jury that recognizes one of the

06:44

12 witnesses, to bring that to Ms. Mulqueen's attention at the

06:44

13 break and we'll go from there.

06:44

14 MR. SAVITT: Yes, sir.

06:44

15 THE CLERK: Okay, so we're all set?

06:44

16 THE COURT: We are indeed, Ms. Mulqueen.

06:44

17 THE CLERK: All rise.

06:44

18 (Jury enters courtroom at 3:44 p.m.)

06:47

19 THE COURT: Please be seated, folks. Before we

06:47

20 resume the testimony, one of our witnesses has mentioned to

06:47

21 the court and counsel that he may have recognized a member

06:47

22 of the jury. So if there is any among you who recognize any

06:47

23 of our witnesses, would you please bring that to the

06:48

24 attention of Ms. Mulqueen at the next break, which will be

06:48

25 the end of the day. We will resume tomorrow at 9:30 a.m.

06:48

SPIVACK - DIRECT/MR. SMITH

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1 sharp. So please do your very best to be here. We'll be
2 ready to go at 9:30 and more about the schedule later on.
3 Go ahead.

4 MR. SMITH: Put it up for the witness only, again.

5 Q I have put up 46F. Do you see that on the screen?

6 A I can, yes, sir.

7 Q And can you describe what it depicts?

8 A Yes, sir. This is one of the prepubescent females in
9 the previous exhibit. This is just a closeup shot of her
10 genitalia.

11 Q And approximately what time in the March 7th video
12 recording made by Jack did this occur?

13 A This occurred at 77 minutes and 35 seconds.

14 MR. SMITH: If we can publish to the jury.

15 (Exhibit published.)

16 MR. SMITH: I published that to the jury for five
17 seconds only.

18 Put it back for the witness only.

19 Q This is our last segment, Government Exhibit 46G. Can
20 you describe what is depicted in that photo, Agent Spivack?

21 A Yes. I believe this is the same prepubescent girl that
22 was depicted in the last exhibit. It's just a little bit
23 zoomed out just a little bit.

24 Q What time did this occur in the video recordings?

25 A This was approximately 77 minutes, 55 seconds.

SPIVACK - DIRECT/MR. SMITH

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1 MR. SMITH: Publish this last one to the jury.

06:49

2 (Exhibit published.)

06:49

3 MR. SMITH: I'll just note for the record that we
4 published it for approximately five seconds.

06:49

06:49

5 THE COURT: All right.

06:50

6 Q Now, Agent Spivack, during the course of the time
7 that -- the approximate ten minutes that you were talking
8 about that these videos were displayed on the video
9 recording device that Jack was carrying, was audio also
10 recording?

06:50

06:50

06:50

06:50

06:50

11 A Yes, it was.

06:50

12 Q And in preparation for the trial, did you pull that
13 audion out so we can listen to that without seeing the
14 video?

06:50

06:50

06:50

15 A Yes, I have.

06:50

16 MR. SMITH: The government will play the audio
17 now. Pick up at page 57 of the transcripts.

06:50

06:50

18 THE COURT: Five, seven?

06:50

19 MR. SMITH: Five, seven, at the same line
20 approximately halfway down.

06:50

06:50

21 MR. SAVITT: Your Honor, may I just have a moment
22 to get something clear with the prosecutor.

06:50

06:50

23 THE COURT: Sure, go ahead.

06:50

24 (Conferring.)

06:50

25 MR. SAVITT: Thank you very much, your Honor.

06:50

SPIVACK - DIRECT/MR. SMITH

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1 MR. SMITH: And I'll just note for the record that
2 defense inquired whether you can actually hear the child on
3 the video.

4 Q Agent Spivack, are you hearing people talking or the
5 actual child pornography.

6 A You're hearing people talking.

7 THE COURT: When you say people, people who are
8 denoted on this transcript?

9 THE WITNESS: That's correct. So Mr. Baslan,
10 Jack, and Ms. Henry.

11 MR. SMITH: Can you set it back to the podium
12 position.

13 Q Agent Spivack, a person named Kayla came up during the
14 course of that conversation. During the course of your
15 investigation, did you identify anyone named Kayla?

16 A Yes, sir.

17 Q Who is that?

18 A Kayla is one of Jack's daughters.

19 Q Approximately how old is she?

20 A Approximately ten years of age.

21 Q And is there -- now, I've stopped the recording. Is
22 there more recording on this device?

23 A There is.

24 Q And can you just summarize what that consists of?

25 A Sounds -- what appears to have happened is Jack, the

SPIVACK - DIRECT/MR. SMITH

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1 defendant and Kristen go into a room and there are sounds
2 indicative of sexual behavior that can be observed by
3 listening to the recordings.

4 Q Is there some period where Jack then leaves?

5 A He does. You can hear him leave and get into his car
6 and drive to our station location.

7 MR. SMITH: Let me just play the very end of the
8 call -- I'm sorry, of the recording.

9 Q Agent Spivack, after the audio that we just heard on
10 the March 7th recording, were there further telephone calls?

11 A On that night, yes, sir.

12 Q Did they relate to child molestation?

13 A No, they did not.

14 MR. SMITH: If I may approach, your Honor?

15 THE COURT: Yes.

16 Q I've given you what's been marked as Government
17 Exhibit 6. Do you recognize that?

18 A I do.

19 Q What is it?

20 A That's a calendar of January through March of 2013.

21 Q Does it appear to be accurate?

22 A It does.

23 MR. SMITH: The Government offers Government
24 Exhibit 6.

25 MR. SAVITT: No objection.

SPIVACK - DIRECT/MR. SMITH

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1 THE COURT: Received. HEADER 07:15

2 (Government Exhibit 6 admitted into evidence.) 07:15

3 THE COURT: Calendar for what year. 07:15

4 THE WITNESS: 2013, sir. January through March. 07:15

5 Q Agent Spivack, was there another call recorded on the 07:15

6 ITAC system on March 8th, 2013? 07:15

7 A There was. 07:16

8 Q Did you speak to Jack before he made this call? 07:16

9 A I did. 07:16

10 Q Before I go forward, did you speak to Jack after that 07:16

11 March 7th meeting, where you heard the recording on? 07:16

12 A I did. 07:16

13 Q Could you describe what his demeanor was after you 07:16

14 spoke to him. 07:16

15 A Jack was visibly upset when we met in the station area. 07:16

16 He was visibly shaken. 07:16

17 Q Now, as to this March 8th call, what, if anything, did 07:16

18 you tell Jack before that call? 07:16

19 A As I recall, there had been discussion about a meeting, 07:16

20 as I recall. We had instructed Jack to not schedule a 07:16

21 meeting for later in the week. I think the seventh might 07:16

22 have been a Wednesday or Thursday. I think Jack was trying 07:16

23 to schedule a meeting for that Friday, which we were not 07:16

24 prepared to do. 07:16

25 Q Did you give any instructions to Jack about the manner 07:16

SPIVACK - DIRECT/MR. SMITH

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1 in which he should try to cancel this meeting?

07:17

2 A Yes, sir, I did. I instructed Jack to kind of do what
3 he's been doing, in regards to keeping things natural. We
4 wanted there to be the opportunity for future meetings, so
5 we didn't want Jack to cancel in such a way that would --
6 what we call, raise up or do something to alert the
7 defendant that Jack may be working for us. So I instructed
8 Jack to cancel the meeting in a very natural way.

07:17

07:17

07:17

07:17

07:17

07:17

07:17

9 Q And is the call that we're discussing here, the
10 March 8th call at 10:11 a.m.?

07:17

07:17

11 A Yes, sir.

07:17

12 MR. SMITH: Play the March 8th call at 10:11 a.m.
13 It's three tabs folder in the transcript binder.

07:17

07:17

14 (Audio played.)

07:17

15 Q Now, after that, was there another call recorded by the
16 ITAC system on March 8th?

07:17

07:19

17 A Yes, sir, there was.

07:19

18 Q Any talk of sexual abuse of children?

07:19

19 A No, sir.

07:19

20 Q What other call is after that?

07:19

21 A March 10th, 2013, at approximately 2:05 p.m.

07:19

22 MR. SMITH: I think that's actually mislabeled in
23 the binders. Let me play the March 10th call at 2:05 p.m.

07:20

07:20

24 THE COURT: March 10th call what --

07:20

25 MR. SMITH: At 2:05 p.m.

07:20

SPIVACK - DIRECT/MR. SMITH

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1 THE COURT: 2:05 p.m. I believe it's mislabeled. 07:20

2 I believe the tab indicates that it's at 851. 07:20

3 Q Agent Spivack, when was the next call in which there 07:20
4 was some discussion of child molestation? 07:23

5 A It was on the 12th at 7 p.m. 07:23

6 Q Is there a portion of that call that doesn't relate to 07:23
7 child molestation? 07:23

8 A Yes, sir, we cut that out. 07:23

9 Q So I would -- I would direct you to -- that was -- was 07:23
10 that March 12th at 7:57 p.m.? 07:23

11 A Correct. 07:23

12 Q Okay. And we're starting in the middle of the call. 07:23
13 Is that right? 07:23

14 A Approximately in the middle of the call. 07:23

15 MR. SMITH: We'll play the call occurring on 07:23
16 March 12th, 7:57 p.m., which is in the binder under that 07:23
17 tab. 07:23

18 (Audio played.)

19 MR. SMITH: You can just flip it over to the 07:23
20 witness for a second. I'm going to put up Government 07:25
21 Exhibit 6, which is the calendar showing March 2013. 07:25

22 Q All right. So just to -- progression. The first 07:25
23 meeting, what day of the week was that? 07:25

24 A This was March 7th, this is a Thursday. 07:25

25 Q And now we're in the following week, we just listened 07:25

SPIVACK - DIRECT/MR. SMITH

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1 to call, on which day of the week.

07:25

2 A March 12th, Tuesday.

07:25

3 Q What is the next activity in the case following
4 March 12th?

07:25

07:25

5 A The next activity was a meeting similar to that of the
6 7th. Same concept. This was on March 14th, 2013.

07:25

07:25

7 Q Was there a particular purpose that you had in setting
8 up this meeting?

07:25

07:26

9 A Yes, sir.

07:26

10 Q When was that?

07:26

11 A Among our general purpose of trying to identify more
12 about this plan to exploit children, sexually exploit
13 children. We also have information now concerning
14 encryption, encryption devices, encryption hard drives. I
15 wanted to know as much as I could about these encrypted hard
16 drives. Where does the defendant maintains his child
17 pornography and how he encrypts it.

07:26

07:26

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07:26

18 Q When you say meetings, was this a meeting between Jack
19 and the defendant?

07:26

07:26

20 A Yes, sir.

07:26

21 Q What, if anything, did you do before that meeting?

07:26

22 A Same thing that we did on March 7th. We set up a
23 pre-meeting at our staging area with Jack, where we
24 discussed the concept of operations. What we wanted Jack to
25 do. What we were looking to get out of the meeting, safety

07:26

07:26

07:26

07:26

SPIVACK - DIRECT/MR. SMITH

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1 protocols, things of that so the.

07:26

2 Q And after you had that discussion, did you give him
3 anything?

07:26

07:26

4 A I did, yes, sir.

07:26

5 Q What did you give him?

07:26

6 A This time I gave him a 500 gigabit encrypted hard
7 drive, an Apricorn brand hard drive, which is a hard drive
8 that had been recommended to Jack by the defendant.

07:26

07:27

07:27

9 Q And did you give him any instructions about what he was
10 supposed to do with that hard drive?

07:27

07:27

11 A Yes, sir. I instructed Jack that similar to the thumb
12 drive he had had before, that he was to show Mr. Baslan, the
13 defendant, that he had this encrypted hard drive and see if
14 the defendant would be willing to place child pornography on
15 it.

07:27

07:27

07:27

07:27

07:27

16 Q Did you give Jack recording devices?

07:27

17 A I did.

07:27

18 Q And how many?

07:27

19 A I gave him the same number, three -- excuse me, two
20 audio recordings, and then I also gave him a video audio
21 recording device except this time it was a little bit
22 different, a different type of device than we used at the
23 previous meeting. And I also gave him the same realtime
24 recording device that he had had before.

07:27

07:27

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07:27

25 Q Who activated those devices prior to the meeting?

07:27

SPIVACK - DIRECT/MR. SMITH

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1 A Myself and Agent Robertson.

07:27

2 Q After activating the recording devices while meeting
3 with Jack, what did you do?

07:27

07:27

4 A I'm sorry, sir?

07:27

5 Q After you activated the recording devices, what was the
6 next step?

07:28

07:28

7 A After we activated the recording devices, I then
8 recorded preamble, sent Jack on his way. We followed him to
9 the residence of Mr. Baslan and Ms. Henry. We again sat
10 outside and observed -- well, we observed Jack go into the
11 residence and we were able to listen realtime of the
12 conversation.

07:28

07:28

07:28

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07:28

13 Q Approximately how long was it?

07:28

14 A This one was much shorter. I believe the total time
15 was 45 minutes.

07:28

07:28

16 Q And then what happened at the end of that 45 minutes?

07:28

17 A Similar thing. Jack left the residence. We observed
18 him get into his vehicle. We followed him back to the
19 staging area where we did a debrief, and I again issued a
20 post-amble and turned the recording devices off.

07:28

07:28

07:28

07:28

21 Q And with respect to this meeting, were you able to
22 determine whether or not the recorded devices had been
23 turned off at some point during the meeting?

07:28

07:28

07:28

24 A I checked the recording devices and none of them had
25 been turned off during the meeting.

07:28

07:28

SPIVACK - DIRECT/MR. SMITH

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1 MR. SMITH: May I approach, your Honor?

07:28

2 THE COURT: Yes.

07:29

3 (Continued on the next page.)

07:31

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Spivack - Direct - Smith

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1 MS. SMITH: I've handed Agent Spivack Government
2 Exhibit 3.

3 Q Agent Spivack, when you retrieved the recording devices,
4 did you at some point download them?

5 A I did.

6 Q Looking at Government Exhibit 3, do you recognize that?

7 A Yes, sir.

8 Q What do you recognize it to be?

9 A A CD that I made of the three -- of the two audio
10 recordings and one video recording.

11 MR. SMITH: The government offers Government
12 Exhibit 3.

13 MR. SAVITT: No objection, your Honor.

14 THE COURT: Government 3 is received.

15 (Government's Exhibit 3 was received in evidence.)

16 Q I now like to -- now, Agent Spivack, prior to trial, did
17 you cut out a couple of parts of the audio recording we're
18 about to listen to?

19 A Yes, I did.

20 Q What parts?

21 A Mainly the parts of the cooperator driving to and from
22 the residence.

23 Q Did you cut out the cooperator urinating?

24 A I did, once or twice.

25 Q Are those cuts indicated on the recording themselves?

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1 A Yes, they are.

2 Q How so?

3 A We have inserted an approximately five second gap, so in
4 listening to the recording device, you'll hear conversations,
5 followed by just five seconds of nothing. That's the gap that
6 we took out of the recording.

7 Q You indicated there was a video recording device?

8 A Yes, sir.

9 Q Was this the same type as the first one?

10 A No, sir, completely different device.

11 Q And was this device capable of being manipulated so you
12 can aim it at different locations in a residence?

13 A Yes, sir. I mean, in theory, it was. The way we
14 configured it to the cooperator, didn't really allow for a
15 whole lot of control by the cooperator to point at a
16 particular direction.

17 Q Did it capture much that was useful?

18 A No, it did not.

19 MR. SMITH: I'd like to play the audio from the
20 March 14th recording we just talked about, which is in the
21 binders under a tab that indicates March 14, 2:54 p.m.

22 THE COURT: All right. Go ahead.

23 MR. SMITH: Can you put the audio on?

24 (Audio played for the jury.)

25 THE COURT: You have follow-up questions on what we

Spivack - Direct - Smith

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1 just heard?

2 MR. SMITH: It's still going, your Honor, just the
3 very end of the recording.

4 THE COURT: All right. Go ahead.

5 (Audio played for the jury.)

6 MR. SMITH: I have a couple of follow-ups,
7 your Honor.

8 THE COURT: Quickly.

9 Q Agent Spivack, following that operation, did you meet
10 with Jack again?

11 A I did.

12 Q Did you receive anything from him?

13 A I did.

14 Q What did you receive?

15 A I received the same 500 gigabyte encrypted hard drive
16 that I'd given him before the operation.

17 MR. SMITH: That's with respect to this day. I was
18 going to move on to another day.

19 THE COURT: That's it for our day, ladies and
20 gentlemen. Make good on my promise to have you home by 5:00.
21 Do not discuss the case. We resume promptly at 9:30 a.m.
22 tomorrow morning. I understand there are two of you who rely
23 on the Long Island Railroad. We'll keep our fingers crossed,
24 and hope for the best and otherwise deal with the problem
25 later on in the week. 9:30 in the morning. Good night. Safe

Spivack - Direct - Smith

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1 home. See you tomorrow.

2 (Outside the presence of the jury.)

3 THE COURT: All right. Sit down for just a second.
4 Obviously you've got more to do with Agent Spivack. When do
5 you expect to finish with him, Mr. Smith?

6 MR. SMITH: Probably around noon tomorrow.

7 THE COURT: And then Mr. Savitt will no doubt have
8 his time with him. Then who's next?

9 MS. DEMAS: Your Honor, an individual by the name of
10 Ralph Steven, who is the cooperator -- excuse me -- the
11 confidential informant's brother, and then we have a few
12 records custodians and some FBI witnesses who either processed
13 evidence or were doing surveillance.

14 THE COURT: I see.

15 MS. DEMAS: All relatively short witnesses.

16 THE COURT: Okay. And so when do you anticipate
17 finishing this direct case?

18 MR. SMITH: I anticipate we could finish by Friday.
19 Could finish earlier. It depends quite a lot on Mr. Savitt's
20 crosses.

21 MR. SAVITT: I'm always the culprit, your Honor.

22 THE COURT: No, no, sometimes I'm the culprit, and
23 apropos of that, I think it bears noting, vis-à-vis the screen
24 shots that were the subject of some debate, I can imagine any
25 number of ways in which those screen shots could have been

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1 presented with a lot more impact. I don't say that to
2 criticize, quite the contrary. I thought the relatively --
3 almost an oximoron, the relatively benign way in which they
4 were presented, including the brief brevity of it, certainly
5 speaks to the question that I had previously resolved of the
6 prejudicial impact of one or two of them overcoming what I
7 think is the significant probative force, just an observation.
8 We were in it and out of it in no time. And you certainly
9 don't have to agree with me, Mr. Savitt. But as things go, I
10 think it was handled rather sensitively. With that, we'll
11 call it a day.

12 I'm available one full hour prior to start of trial.
13 If you need to speak to me for any reason, contact the
14 reporter. Let my chambers know, and I will be available to
15 you, as I say, for a full hour anytime after 8:30 in the
16 morning. Have a good night.

17 MR. SMITH: Your Honor.

18 THE COURT: Sir.

19 MR. SMITH: Can I assume we're ending at 5:00 every
20 day, unless you say something beforehand?

21 THE COURT: 5:00?

22 MR. SMITH: Yeah, just for witness planning.

23 THE COURT: Yes.

24 MR. SMITH: Thank you, your Honor.

25 THE COURT: Yes, 5:00 o'clock. Thank you. Good

1 night.

2 (Proceedings adjourned.)

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I N D E X

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